

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

— — —

IN RE: AUTOMOTIVE WIRE HARNESS
SYSTEMS ANTITRUST

Master File No. 12-02311

Hon. Marianne O. Battani

THIS DOCUMENT RELATES TO:
ALL ACTIONS

STATUS CONFERENCE/MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, September 26, 2018

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1 Detroit, Michigan

2 Wednesday, September 26, 2018

3 at about 10:01 a.m.

4 — — —

5 (Court and Counsel present.)

6 THE CASE MANAGER: Please rise.

7 The United States District Court for the Eastern
8 District of Michigan is now in session, the Honorable
9 Marianne O. Battani presiding.

10 All persons having business therein, draw near,
11 give attention, you shall be heard. God save these
12 United States and this Honorable Court.

13 You may be seated.

14 The Court calls Case No. 12-02311, In Re:
15 Automotive Parts Antitrust Litigation.

16 THE COURT: Good morning.

17 THE ATTORNEYS: (Collectively) Good morning.

18 THE COURT: Oh, my gosh. We have a standing room
19 only? Can you move over a little bit here? Let's get
20 everybody seated so you don't have to stand. I guess this
21 courtroom might be a little bit smaller than my courtroom --
22 prettier, but smaller. I think that by our next meeting we
23 will be back in our usual chambers, not that I don't like
24 these, but it's kind of hard to be moving around all the
25 time.

1 Okay. All right. Let us begin, as always, with
2 the report of Mr. Esshaki. Gene.

3 MASTER ESSHAKI: Thank you very much, Your Honor.

4 I would like to report that since we last met, I
5 believe we've had an additional six motions that have been
6 disposed of. I apologize to counsel for having to conduct
7 them in my offices, but it's much easier than trying to
8 arrange a courtroom here when construction is going on, and I
9 think we've accommodated everybody comfortably, and until
10 such time as the Judge's chambers are restored, we will
11 continue to do that.

12 There was no motion hearing yesterday because there
13 were no motions ripe. There is currently one pending motion,
14 that is the JTEKT motion, which, by agreement of the parties,
15 will be heard again in my office on October 30th if I'm
16 remembering correctly.

17 And I would like everyone to know that with that --
18 that motion is number 92 that I've handled since being
19 appointed to this case. And recently I've had the unique
20 opportunity to receive an entire education about the
21 European Union Secrecy Act -- Privacy Act, and some
22 well-written reports from some of the Europeans' best minds
23 on that Act, so it was very fascinating.

24 But otherwise, the motions are coming in and they
25 are moving along quickly. I don't believe counsel has

1 anything other than that, so --

2 THE COURT: That's it?

3 MASTER ESSHAKI: Yes, Your Honor.

4 THE COURT: Anybody have any questions or comments
5 for the Master?

6 (No response.)

7 THE COURT: All right. Thank you very much, Gene.
8 Much appreciated. I don't know anything about the European
9 Privacy Act.

10 MASTER ESSHAKI: Yes, Your Honor, European Union --

11 THE COURT: But I hope it doesn't interfere with
12 our United States' litigation.

13 Okay. The next thing -- oh, I know, I wanted to
14 ask -- no, I wanted to comment. First of all, is it
15 Randy Weill?

16 MR. WEILL: Randall Weill, yes, Your Honor.

17 THE COURT: Thank you. I appreciate you working on
18 the agenda and also the status report. Everything looks
19 great.

20 MR. WEILL: Thank you, Your Honor. I would mention
21 that it is a collaborative effort that all counsel
22 participates in.

23 THE COURT: Well, I would thank them individually
24 but it would take me too long, but I know that you had a hand
25 in it. Thanks a lot.

1 Okay. As we go through this next part, the status,
2 I would like for you to tell me a little bit if you have a
3 situation with the opt-outs. I'm kind of curious as to where
4 the opt-outs are in the various parts. I know there was some
5 discussion in one of them about waiting to see what the
6 payouts might be before they decided to do anything, but,
7 anyhow, some time has gone by, so if you have opt-outs in
8 your area, please update me about them.

9 Let's start with the direct purchasers, the status
10 of settlement and mediation update.

11 MR. KANNER: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. KANNER: Steve Kanner, Freed, Kanner,
14 London & Millen, on behalf of the direct purchaser
15 plaintiffs.

16 THE COURT: Could you speak right into the
17 microphone? I understand it is very difficult to hear in --

18 MR. KANNER: I will try again. Is that better?

19 THE COURT: Yes.

20 MR. KANNER: I'm here to talk about the current
21 status of settlements and mediation, and I thought the
22 easiest way of doing this and the most efficient way would be
23 to give you some idea numerically where we are.

24 As of now there are 16 cases where there's at least
25 one settlement with a defendant. There are seven cases with

1 only one defendant remaining. We have -- out of the various
2 68 defendant groups, 22 of those cases have been settled.

3 With respect to what's happened between the last
4 status conference when I gave a similar report and today, I'm
5 pleased to advise the Court that we have 18 additional
6 settlements since our last status conference in June. I can
7 run through the names, but I think Your Honor is well aware
8 of them since in the last week or so we've seen a flurry of
9 preliminary approval orders coming down, for which we
10 appreciate, and we will be moving ahead on those with due
11 diligence.

12 With respect to mediations, we've been working both
13 with Judge Weinstein and with several other mediators to
14 accomplish the results that are included in those 18
15 additional settlements. There are other cases which are
16 pending mediation as we speak. One of -- one or two of those
17 may not go to mediation because the parties are speaking
18 directly. And, of course, we are in touch with
19 Judge Weinstein on a regular basis to let him know what cases
20 are on top of our list in terms of priorities. And I'm also
21 here to tell you that at least two of the cases, the
22 defendants have indicated that they are not willing to
23 discuss mediation at this point because of the pendency of
24 motions to dismiss.

25 With that little blip, we recently submitted a list

1 of cases to Judge Weinstein which we believe are ripe for
2 mediation, and there's discussion back and forth on a fairly
3 regular basis for scheduling of those.

4 THE COURT: Okay. As I look at these numbers,
5 there has to be 30-some cases that have not -- defendant
6 groups, excuse me, that have not settled. Is that about
7 right?

8 MR. KANNER: That's correct, and those are -- many
9 of those are in the process of discussion right now, and
10 those preliminary approvals would have to be added to that
11 group -- or would reduce the number, I should say, from that
12 group.

13 THE COURT: Could you give me some type of time
14 frame? I mean, if you were to say that the direct cases are
15 probably going to be resolved or be ready for trial within
16 what period of time?

17 MR. KANNER: You know, Your Honor, someone asked me
18 that question, a colleague, and I said I'm certainly hoping
19 that we are done before my 18-year-old, who we dropped off to
20 school at the end of August, my youngest, will be done with
21 college.

22 THE COURT: Well, I thought you were going to say
23 was an infant but --

24 MR. KANNER: No, no, been there, done that. The
25 18-year-old is the youngest.

1 But the reality is, as we move ahead, the pace of
2 the settlements is picking up, and the pace of discussions
3 about settlements are picking up, so I'm optimistic it would
4 be -- I think it would be foolhardy on my part to put a
5 specific date on it, but I would hope within a couple of
6 years we could be cleared, that's certainly our intention.

7 THE COURT: I get asked this question all the time.
8 You still have that case? When is that case going to finish?
9 And I feel very ignorant in not being able to answer a case
10 that has been on my docket for so long.

11 MR. KANNER: Well --

12 THE COURT: But since you have the same feeling and
13 you are the attorney --

14 MR. KANNER: It is even worse with my partners,
15 they are far more insistent on when we are going to be done
16 with this series of cases. But, again, the reality is we are
17 moving -- I think there's a momentum issue involved; as these
18 cases are aging, there seems to be an increased desire both
19 on our part and on the various defendants through their
20 counsel to have rational discussions about resolution.

21 THE COURT: Okay.

22 MR. KANNER: It's my hope that we can continue on
23 that path, and if it does not, we will certainly advise the
24 Court.

25 THE COURT: Thank you.

1 MR. KANNER: Thank you very much.

2 THE COURT: Next on the agenda is the end payors.

3 Ms. Salzman.

4 MS. SALZMAN: Good morning, Your Honor.

5 Hollis Salzman for the end payors. How are you?

6 THE COURT: Good.

7 MS. SALZMAN: On the end payors and the status of
8 the settlements, of the 41 cases that we filed with regard to
9 the publicly disclosed settlements, 32 cases are fully
10 settled. We have an additional five settlements that we have
11 agreements in principle; we are working on negotiating the
12 language of those settlement agreements, and hope to be able
13 to present those to Your Honor for preliminary approval in
14 the next month. And if you include those additional five
15 settlements, it brings the number of remaining cases to four,
16 and remaining defendants to five -- I'm sorry, I got that
17 backwards. The remaining defendants are four, and the
18 remaining cases are five. One of the defendants is a
19 defendant in two cases.

20 Of those four remaining defendants, we have a
21 mediation scheduled in two weeks, and we also have active
22 bilateral discussions with another one of the four. With the
23 remaining two, they are a little more difficult, but we are
24 working through the issues with the mediation team, and we
25 are still hopeful at this point that we will be able to

1 resolve them.

2 THE COURT: Okay. Very good. And I neglected to
3 ask you, Steve, about the opt-outs.

4 MS. SALZMAN: I will go over that briefly.

5 THE COURT: Let me ask you.

6 MS. SALZMAN: So the opt-outs, we have the GEICO
7 issue that's before Your Honor later today, but other than
8 that, we have had very few opt outs in our case, maybe one or
9 two end payors throughout the three -- the three settlement
10 rounds.

11 THE COURT: Okay.

12 MS. SALZMAN: Okay.

13 THE COURT: Thank you.

14 MS. SALZMAN: You're welcome.

15 THE COURT: Mr. Kanner.

16 MR. KANNER: Judge, to answer your question very
17 briefly with respect to opt outs in our cases, they are
18 typically OEMs and occasional entities and tier 2s. Because
19 we generally have an idea who's opting out, we baked that
20 into the settlement numbers, and in some cases there is a
21 built-in, as the Court knows, reduction of the ceiling for
22 what can be paid. For example, today's --

23 THE COURT: Fiat-Chrysler.

24 MR. KANNER: The Chryslers, the Fords. Ford has
25 opted out of all of these cases, but we still need to

1 calculate for that. And so with us it has never been an
2 issue in terms of objections or what have you, that's baked
3 into the numbers.

4 THE COURT: Okay. Thank you very much.

5 MR. BARRETT: Good morning, Your Honor.

6 Don Barrett for the auto dealers.

7 Your Honor, as you know, we've worked in settlement
8 discussions as a team with the end payors, and what
9 Ms. Salzman told you is accurate. I would like to put a
10 little bit different take on it, and I think it might be
11 helpful.

12 There were 41 different auto parts cases that were
13 filed by both the ADPs and the end payors. And 37 of them
14 have had settlements reached -- settlements in principle, and
15 they are moving right along, they will be accomplished.
16 There are just five of the 41 cases that remain, and we just
17 have four defendants in those five cases, but the five cases
18 that we have, we each have just one, just one, and I would
19 like to be a little more specific about that.

20 In the fuel injection system case, there were nine
21 different defendant families. We've settled with eight of
22 them. Only Mikuni remains. Mikuni declines to give us their
23 affected sales information, and without that we are at a loss
24 as to how to formulate a demand.

25 Valve timing control devices, again, it's Mikuni,

1 and, again, they won't give us any of their sales information
2 which has been the basic thing that all the settlement
3 discussions have primarily revolved around. So we are at a
4 loss as to how to deal with Mikuni.

5 The exhaust systems case, we've settled with four
6 of the defendant families. The remaining defendant is Bosal.
7 We are in discussion with Bosal. We have had a mediation.
8 We remain far apart, but the mediator is helping us and hope
9 springs eternal about that.

10 Shock absorbers, the fourth case, and KYB is the
11 only defendant. There were three, two of them have settled.
12 We have a mediation set in San Francisco on the 9th of
13 October, and we are hopeful that that case will be resolved.
14 That is a substantial case, one of the bigger cases.

15 And then the last case is the automotive steel
16 tubes. There were three defendants. We've -- there were
17 four defendants. We've settled with three of them. Sanoh is
18 the only one left. We are in bilateral settlement
19 discussions that are proceeding in good faith, and we are
20 confident that that -- that that should resolve barring some
21 glitch.

22 As far as the time frame, when we come back up here
23 in February we -- I mean, there's no reason we shouldn't be
24 completely done with these. There is just no reason for it.
25 We are going to have to deal with these glitches, but I

1 assume --

2 THE COURT: With steel tubes or --

3 MR. BARRETT: Well, I'm talking about all four of
4 them.

5 THE COURT: All four?

6 MR. BARRETT: All four defendants, there is no
7 reason on earth we can't settle with those defendants and do
8 it promptly.

9 And so as far as opt outs are concerned, the -- the
10 groups, it's a fairly small group, it's like as far as the
11 number of cars, it's 1.2 percent or something like that,
12 they -- they've opted out of the last round as well.

13 That's it, Your Honor.

14 THE COURT: Okay. Do you know or hear anything in
15 terms of the opt-outs, whether they will be filing separate
16 suits?

17 MR. BARRETT: No, ma'am, we do not.

18 THE COURT: Nothing.

19 MR. BARRETT: We do not. They may be -- they may
20 be reaching some private settlement, but we haven't heard, we
21 don't know.

22 THE COURT: Okay.

23 MR. BARRETT: Thank you.

24 THE COURT: The other thing I wanted to ask you is,
25 you indicated that -- is it Mikuni in the fuel injection,

1 that remains. You are not getting some information from
2 them?

3 MR. BARRETT: We are not getting -- all of these
4 cases mainly settle on the basis of affected sales; you know,
5 how much did, you know, on the -- how much commerce was
6 there; was it \$100 million worth or was it \$2 million worth?
7 And that information has to come from the defendants. If we
8 are going to do it before full discovery we can -- you know,
9 we can ramp up and do that but we can't, of course, make them
10 tell us, but they have declined to do it, and we don't know
11 why and -- but that's where we are.

12 THE COURT: You will use the services of
13 Mr. Esshaki, if need be, for a hearing on that.

14 MR. BARRETT: We have not filed a motion; that may
15 be the next thing to do.

16 THE COURT: Okay.

17 MR. BARRETT: Thank you.

18 THE COURT: Thank you. Is this truck and equipment
19 or are you --

20 MR. SIBARIUM: No, just a brief word.

21 Mike Sibarium for Mikuni.

22 We have provided, I think, two out of essentially
23 six figures that they wanted. There were no sales of valve
24 timing control devices in the United States, no direct sales
25 into the United States from abroad, and no sales at all by

1 the U.S. subsidiary. We are working on the figures for fuel
2 injection systems.

3 THE COURT: For what?

4 MR. SIBARIUM: For fuel injection systems, we are
5 working on those figures. We are, I think, the only
6 defendant in this entire MDL that not only has closing
7 letters from the DOJ but closing letters from the EU as well.
8 We never had to calculate volume of commerce sales for either
9 of these for any governmental entity. We had no plea
10 anywhere in the world. So it's just taking a little longer,
11 but we are working on it.

12 THE COURT: Okay. Glad you are working on it.

13 Thank you.

14 Good morning.

15 MR. PARKS: Good morning. Manly Parks for the
16 truck and equipment dealer plaintiffs.

17 We are at the point of we have a series of four
18 settlements that are scheduled for final approval hearing
19 this afternoon, as Your Honor is aware. Aside from those
20 settlements, we will be -- we will have no other matters
21 pending in this proceeding with the exception of the claim in
22 occupant safety systems against Takata which, as Your Honor
23 is aware, is in bankruptcy. I am happy to report that we
24 have actually reached an agreement in principle with Takata
25 regarding that claim as well, as of yesterday, so that will

1 take some time to document and go through the various -- it's
2 conditional upon approval by a trust and the bankruptcy court
3 and a bunch of other things, and ultimately we will have to
4 bring it to this Court for approval in a class setting, as I
5 understand, but there -- there is an agreement in principle,
6 and assuming that we can get that put to bed the way we want
7 to, then we will be complete in all of our claims and
8 proceedings in this MDL.

9 THE COURT: So at that point you will be ready to
10 be -- I mean, you will be done and you will be ready for
11 distribution?

12 MR. PARKS: Yes, absolutely. We are -- we are
13 hopeful that we can move that process along so that we can
14 begin distribution. We have a number of -- we have a system
15 in place for distribution. We have a portal developed for --
16 that can go live on our website for the claims process.
17 We've gone pretty far down that road, but we did not want to
18 incur the additional administrative expenses of multiple
19 levels of distribution --

20 THE COURT: Right.

21 MR. PARKS: -- particularly given that the
22 magnitude of our settlements is at a different order than
23 say, for example, the end payors or auto dealers. So we
24 don't have any additional -- it would represent too much of a
25 cost of the overall settlement pool, in our assessment, to

1 try to do that multiple times and incur layers of
2 administrative expenses.

3 THE COURT: It makes a lot of sense to do it one
4 time, and it sounds like you have things in order, so as soon
5 as you are ready, which will be soon --

6 MR. PARKS: Yes, correct. And we have no opt outs
7 in any of our settlements.

8 THE COURT: Thank you.

9 MR. PARKS: Thank you.

10 MR. REISS: Good morning, Your Honor. Will Reiss
11 for the end payor plaintiffs, and I'm going to be speaking on
12 behalf of the auto dealer plaintiffs as well.

13 THE COURT: Okay.

14 MR. REISS: Just to update you on the status of our
15 26F conferences and our discovery plans.

16 As you heard before, most of our cases are settled,
17 and we have settlements in principle. So there are only very
18 few cases in which we have been negotiating the schedules.

19 The good news is in the fuel injection systems,
20 this is the case in which Mikuni is a defendant. We have
21 submitted a discovery schedule. Obviously hopefully we get
22 the transactional data from them sooner, but the schedule
23 obligates them to produce transactional data early next year,
24 so at a minimum we'll be getting it then if not sooner
25 hopefully.

1 Valve timing control devices is also a case in
2 which Mikuni is a defendant. We are going to be negotiating
3 that. That's going to be substantially similar to the fuel
4 injection systems. We hope that will be submitted within the
5 next week or two.

6 Exhaust systems, we have not submitted a discovery
7 plan. We just recently yesterday filed a motion to amend,
8 that is a case in which Bosal is the sole remaining
9 defendant. And our motion to amend seeks leave to name
10 several additional Bosal entities; so until that motion
11 shakes out, we are not going to be submitting a discovery
12 plan, but we hope that will be resolved soon.

13 And then the only really other case of note is the
14 shock absorbers case, and that's a case in which we have a
15 discovery plan that has been submitted. And I think Your
16 Honor is aware we've had some motion practice on that, and
17 the Special Master ruled that our discovery plan was
18 operative. KYB has moved to shorten the plan, and KYB has
19 filed an objection to the Special Master's decision.

20 We just very recently submitted an order which we
21 think is appropriate. It follows the decision which you just
22 recently reached with respect to KYB's expedited motion, and
23 it's just awaiting entry.

24 THE COURT: Okay. Good.

25 MR. REISS: Thank you, Your Honor.

1 THE COURT: Thank you very much, Mr. Reiss.

2 MR. LOVE: Briefly, Your Honor. Bradley Love from
3 Barnes & Thornburg. I represent the KYB defendants.

4 I just wanted to note regarding the order that
5 Mr. Reiss mentioned, we received that at 1:00 a.m. this
6 morning. I think it was --

7 THE COURT: Electronic filing.

8 MR. LOVE: I know. I think it was filed sometime
9 yesterday, but they waited to send that to us, so we are
10 reviewing it. And I think we plan to submit a proposed
11 amended order to address the changes in our objections since
12 the discovery plan was entered in May of this year.

13 Some minor things to note. We've already produced
14 all the transactional data in the case and met that deadline,
15 complied with all the plaintiffs' requests. There's just
16 some issues with the custodial documents. And as you are
17 aware, we would like to also get a date certain for
18 plaintiffs to complete any downstream discovery and fully
19 respond to KYB's pending summary judgment motion on
20 passthrough.

21 THE COURT: Okay. Thank you.

22 MR. CALDES: Good morning, Your Honor. Bill Caldes
23 on behalf of the direct purchaser plaintiffs.

24 In regards to the scheduling orders, excluding
25 motions -- pending motions to dismiss, cases with arbitration

1 issues, or where we are still in the process of performing
2 services. There's only one case that's outstanding that
3 needs a scheduling order, and that is air conditioning
4 systems. We are currently exchanging drafts with defense
5 counsel, so we hopefully will have that completed relatively
6 shortly.

7 THE COURT: Okay. That's the only case without
8 one?

9 MR. CALDES: Yes, Your Honor.

10 THE COURT: Good. All right. Thank you.

11 MR. CALDES: Thank you.

12 THE COURT: Ah, out of the jury box.

13 MR. SEEBALD: Your Honor, Craig Seebald for the
14 Hitachi Automotive Systems defendants.

15 Just a minor point related to our settlements with
16 the direct purchasers in the fuel injection system case. We
17 had settled that case with the then plaintiff Irving Levine
18 on -- earlier this week you approved our settlement in the
19 Irving Levine case, and I think on the same day you also
20 approved a motion that allowed the plaintiffs to substitute
21 Irving Levine in for VITEC, so now VITEC is the plaintiff,
22 but our settlement agreement is with Irving Levine.

23 So I just want to let you know we will be filing
24 some type of stipulation with the direct purchasers. We have
25 already been in contact with them, to allow us to amend our

1 settlement agreement so it is with VITEC, the now viable
2 plaintiff, rather than Irving Lavine, which is no longer the
3 plaintiff in the case. So hopefully by the end of the week,
4 you will have something from us to allow us to do that, but
5 under our settlement agreement we need the Court's approval
6 to amend our settlement agreement.

7 THE COURT: Okay. You can amend, and we will see
8 what happens when you do the amended pleading. There should
9 be no problem, right?

10 MR. SEEBALD: Yes, I agree. Thank you.

11 MR. KANNER: Your Honor, I agree, it should not be
12 an issue.

13 THE COURT: Okay. Good. Thank you. Anyone else
14 on the status?

15 (No response.)

16 THE COURT: All right. I am pleased with the fact
17 that things are moving along. They seem to be moving along
18 on a little more rapid pace as has been said. Of course, the
19 Court is always interested in what it can do, if anything, to
20 move it along. I know one thing we can do better is to get
21 our motions out more quickly, and I know that some of them
22 are longer than at least I like, and we are working on it to
23 push them out. It is just that we are overwhelmed with -- we
24 are overwhelmed with paper, just trying to sort through it to
25 get to all of these motions.

1 But I appreciate particularly, and I want to say
2 that on the status report that there is that listing so
3 everybody knows what motions are outstanding because
4 obviously it would be difficult to go through the internet to
5 CM/ECF to determine that unless you are on a particular case.
6 So you all know and I want you to review very carefully
7 the -- that report because I know many of you worked on it,
8 but, please, review it carefully because if you have anything
9 else that's outstanding...

10 There are some perfunctory motions, I know,
11 substitution of counsel, miscellaneous things like that, that
12 just need data entry that we are working on. But in terms of
13 any substantive motion, if you don't see it on the list and
14 you have filed it, please call us. All right. Don't be one
15 of these well, we don't want to remind her because she might
16 rule against me, because that's -- I mean, that will not
17 happen, but I do need to know in case there's any problem.

18 So far we seem to have done very well, but every
19 once in a while there will be a glitch in CM/ECF where
20 something doesn't get into the right spot and causes a
21 problem. So I am really depending on you to let me know if
22 you have outstanding motions that are not listed.

23 Okay. Our next status conference is February 6th.
24 It will be a nice, sunny day with no snow.

25 And then we need a date for the next conference. I

1 was looking at the calendar, and June 5th looks good. I
2 don't know -- does anybody know of a conflict with June 5th,
3 2019?

4 (No response.)

5 THE COURT: I know right now you're probably free
6 that day. Okay. We will set the next conference for
7 June 5th, 2019.

8 Is there anything else before we get to the motion
9 hearings?

10 MR. WEILL: Thank you, Your Honor. Randall Weill
11 again.

12 I would like to raise an issue relating to the
13 production of Department of Justice documents that were
14 produced by guilty plea defendants. Just by way of
15 background, if you recall, the direct purchasers asked last
16 winter if the Court would supplement its original order from
17 October of 2017 to add a number of cases that were not in
18 that order especially because the direct purchasers had not
19 at that time had cases pending.

20 The Court entered that order on May 31, and it
21 directed that the guilty plea defendants in those listed
22 cases produce to each separate plaintiff group within 90 days
23 of the entry of the order, the documents that were produced
24 in all cases that were pending, non-settled and not otherwise
25 stayed.

1 And I am -- the direct purchasers have had
2 discussions with various of these defendants, and one of the
3 groups involving the auto -- the anti-vibration rubber
4 product defendants, and those are Yamashita, Toyo Rubber,
5 Toyo Tire and Bridgestone, did not produce documents within
6 90 days. The 90-day date fell on August 29th of this year.

7 So I wrote a letter to those guilty plea defendants
8 and asked that they produce those documents on -- by
9 September 14th, or that we would take it up with the Court.
10 I got a response that is identical in content from each of
11 the defendants that said, in substance, the defendants on
12 April 13th, 2018, in the AVR case, filed a 1292(b) motion
13 seeking interlocutory appeal of the Court's denial of their
14 motion to dismiss the direct purchaser complaint. In that
15 motion, defendants requested that the Court stay discovery
16 pending disposition by the Sixth Circuit. Therefore, our
17 position is that no discovery of the DOJ productions or
18 otherwise should proceed while the 1292(b) motion remains
19 sub judicial.

20 So we are apparently at an impasse. The direct
21 purchasers believe that the documents are readily available
22 since they've been collected, they've been reviewed, and
23 they've been produced to the Department of Justice. And we
24 would ask that the -- the Court give us direction about how
25 we proceed given the Court's prior order and this response

1 from the AVRP defendants.

2 And that's our situation. I would be happy to have
3 the AVRP defendants address those questions.

4 MR. REISS: Thank you, Your Honor. Steve Reiss for
5 the Bridgestone defendants, and I believe I speak for the
6 other two AVRP defendants that are involved.

7 As Mr. Weill said, I mean, he was quite, I think,
8 open in the situation; we filed a 1292(b) motion with the
9 Court on April 13th. I think the motion was fully briefed by
10 May 21st, and it's still pending. As part of that motion, we
11 asked for a stay of all discovery because I think Your
12 Honor -- I know Your Honor has been inundated with motions
13 and papers, but that motion basically says there is no
14 jurisdiction in this Court. We've challenged the basic
15 bona fide plaintiffs. We think there are very substantial
16 grounds for 1292(b).

17 And our position is simply that while that motion
18 is pending, including a request for a stay of discovery, we
19 should not engage in any discovery because our basic position
20 is the Court has no jurisdiction over that case. We are
21 awaiting a ruling on the 1292(b). In fact --

22 THE COURT: Can I ask you a question because I'm
23 not --

24 MR. REISS: Sure, sure.

25 THE COURT: -- really familiar with the

1 interlocutory appeal, I haven't had very many of them. How
2 long do they take? Are they within the normal course of an
3 appeal?

4 MR. REISS: Your Honor, the procedure first is we
5 request that the District Court certify the case for
6 interlocutory appeal, and that's been fully briefed. If the
7 District Court grants that motion, the Sixth Circuit still
8 has to accept the case. So there has been a round of
9 briefing which is rather expedited to the Sixth Circuit that
10 says you should take this case. If they take the case, then
11 the case is typically on the normal appellate court briefing
12 schedule. So -- so that will take a bit of time, Your Honor.

13 THE COURT: No. Wait a minute. Is the status that
14 they are waiting to see if they will take the case, or they
15 have taken the case and now --

16 MR. REISS: Well, first we need the order from this
17 Court. If the Court -- if this Court grants the 1292(b), we
18 then have to file papers with the Sixth Circuit asking that
19 they accept the case. Frankly, most of the time if the
20 District Court grants the motion, they will. And I have a
21 fair degree of confidence that we -- on the merits of this
22 case, they will take the 1292(b). How long the Sixth Circuit
23 takes to decide that? Usually they are -- the appellate
24 courts are pretty quick about that. But if they take the
25 case, then typically there is the normal appellate briefing

1 schedule in the Sixth Circuit.

2 And as I said, we -- you know, this motion actually
3 had been up for argument before the Court in May and it was
4 taken off the argument schedule. It actually was placed on
5 the schedule again, and it was taken off the schedule for
6 this status conference. So we honestly believe that until
7 the motion is decided, including its request for a stay, as
8 Mr. Weill points out, the Court's order asks for the
9 production except for matters that were stayed.

10 THE COURT: And did you ask for oral argument on
11 it?

12 MR. REISS: We did, Your Honor, we have asked
13 twice, and so far the Court has taken it off twice. We are
14 happy to argue it now, you know, but I think the Court has a
15 schedule and --

16 THE COURT: Are you ready to argue it now?

17 MR. WEILL: Not competently, Your Honor, no.

18 MR. REISS: Well, I think we should go ahead, Your
19 Honor.

20 THE COURT: We wouldn't want any incompetence in
21 this courtroom, not at these hourly rates. Okay. Molly.

22 (An off-the-record discussion was held at
23 10:39 a.m.)

24 THE COURT: All right. Molly reminds me that we
25 have heard extensive argument before.

1 MR. REISS: We did argue the motion to dismiss,
2 Your Honor.

3 THE COURT: And, you know, I think we will do it on
4 the briefs, and we will submit that -- to have that up next,
5 so you will get that soon.

6 MR. REISS: Thank you, Your Honor.

7 THE COURT: Okay.

8 MR. WEILL: Does that mean, Your Honor, that we
9 should await your decision before we --

10 THE COURT: Yes, you should. We will include in
11 the motion whether or not we stay the production, okay -- or
12 stay anything pending the Court of Appeals.

13 MR. WEILL: Thank you very much, Your Honor.

14 MR. REISS: Thank you, Your Honor.

15 THE COURT: Thank you. Anything else before we get
16 to motions?

17 (No response.)

18 THE COURT: Okay. GEICO. What's going on with
19 GEICO? I read and -- oh, you are leaving? Thank you,
20 Mr. Esshaki.

21 (Special Master Esshaki was excused at 10:40 a.m.)

22 THE COURT: We read and read and got to the last
23 pleading and see that there's some agreement, so --

24 MR. RUBIN: Your Honor, Mike Rubin for the
25 Yamashita defendants in the AVRP case, speaking on behalf of

1 the Round 3 GEICO defendants.

2 So your question is exactly right, Your Honor, why
3 are we here? We are here really in an effort to achieve
4 clarity as to who is in and who is not in the settlement
5 classes.

6 GEICO's exclusion request, as we laid out, did not
7 comply with the Court's notice requirements to identify
8 GEICO's purchases, which is the reason there is a lack of
9 clarity as to what purchases and by whom GEICO was seeking to
10 opt out.

11 Coupled with that was the Round 1 briefing in which
12 GEICO said, it's virtually verbatim, exclusion request
13 excluded not only GEICO's purchases but also purchases by
14 other class members who were insured by GEICO, with GEICO
15 arguing that as a subrogee GEICO was standing in their shoes
16 to assert claims for purposes when GEICO reimbursed its
17 insureds and other third-party claimants for their purchases
18 of auto parts.

19 GEICO specifically argued that in part the
20 defendants couldn't challenge GEICO's right to bring those
21 claims because GEICO was listed as an opt out in the final
22 judgments, and the defendants in Round 1 had not objected to
23 GEICO being listed as an opt out.

24 So where are we after all of this briefing? Well,
25 GEICO now says it didn't seek and was not seeking and has not

1 sought to opt out any other class members. That its current
2 complaint --

3 THE COURT: Is this in Round 3 only or 1, 2 and
4 3?

5 MR. RUBIN: Round 3 only, Your Honor. And it says
6 that its complaint does not -- is not based upon and is not
7 asserting any subrogation claims or subrogation rights or
8 other rights derivative of those of class members that have
9 not opted out. And that with respect to its insurance
10 payment claims, GEICO says emphatically that it's only
11 bringing its own claims if it has any, and it's not bringing
12 claims of class members who didn't opt out, and that GEICO is
13 not seeking to stand in the shoes of its class members.

14 And if that's where things ended, Your Honor, we
15 would have probably reached stipulation and withdrawn our
16 papers, and we could have moved on. The issue, Your Honor,
17 is that GEICO then dropped footnotes in the briefs. It's
18 footnote 21 in the opposition brief to our motion.

19 THE COURT: I don't like footnotes.

20 MR. RUBIN: Understood. I --

21 THE COURT: I don't like to read them.

22 MR. RUBIN: And it is footnote 8 in their reply
23 brief to their motion to reply in which the footnote -- the
24 first one says, "If it's found that GEICO cannot recover for
25 its direct injuries caused by defendants' unlawful conduct,

1 GEICO also has subrogation rights."

2 And then it says in the second footnote, "Although
3 GEICO premises its claims on its direct injury in paying for
4 auto parts, which are not derivative of its insureds, GEICO's
5 subrogation rights when it had made payments to insureds or
6 claimants remain intact."

7 So it's unclear exactly what those footnotes mean
8 and what GEICO intends by them, but what we think they are
9 saying is that they are not bringing the claims that the
10 defendants are concerned about on behalf of non-opt out class
11 members, but they might in the future do so.

12 So where are we in terms of at -- in our reply
13 brief? Based on GEICO's representations of what its
14 exclusion request is doing, if that exclusion request were
15 granted, that it would not be seeking to exclude any other
16 entity or person other than GEICO and its affiliates, the
17 defendants no longer object to GEICO's failure to comply with
18 the Court's notice requirements, namely identifying which
19 purchases they made, which vehicles, which parts.

20 Of course, it is ultimately up to the Court to
21 decide whether or not to accept the GEICO's opt out as
22 effective and valid, but for the defendants we no longer
23 object to it because of the clarification as to its scope.

24 As to the broader issues of the other claims that
25 GEICO is bringing and the footnotes about subrogation, they

1 are saying they are not bringing subrogation claims. They
2 obviously have to amend their complaint to comply with the
3 Round 1 court order separating them into parts, but until
4 GEICO does something in line with their footnotes, there's
5 really nothing ripe for the Court to decide. The Court
6 always in approving the settlements retains jurisdiction to
7 enforce the settlements.

8 So where we think the Court should proceed from
9 here, as we said in our papers, and as the end payors have
10 also said, is the Court should enter the proposed final
11 approval orders as they have been submitted by the settlement
12 class counsel, along with the proposed final judgments which
13 generally retain jurisdiction over the settlement agreements
14 and to enforce the settlement agreements.

15 And to further resolve these issues and make sure
16 the record is clear, the Court should specifically state that
17 only GEICO, its expressly identified affiliates, and then the
18 one individual opt out, Mr. Terry -- I'm not going to
19 pronounce the last name right -- Serhion.

20 THE COURT REPORTER: Would you spell that?

21 MR. RUBIN: S-E-R-S-H-I-O-N. They are excluded
22 from the settlement class, no other class members are
23 excluded. And then what the defendants would request is that
24 the Court, in addition to, and without limiting, or quite
25 frankly consistent with its general retention of

1 jurisdiction, state that to the extent that any party or a
2 person or an entity attempts in the future to assert claims
3 of class members that haven't opted out, claims derivative of
4 other class members that haven't opted out, or that any party
5 contends may be pursued -- may not be pursued in the absences
6 of an opt out, but the Court retains jurisdiction to address
7 those in the future and resolve any disputes.

8 And with that I think the settlements can be
9 approved, the final judgments may be entered, and GEICO can
10 proceed with its underlying cases consistent with presumably
11 Round 1 -- the Round 1 order, and we will see what GEICO
12 actually does -- what arguments they actually make and what
13 claims they actually assert. And if we need to, the Court
14 has retained jurisdiction, so we can come back and address
15 the issues concretely and not sort of speculating about what
16 they may or may not do in the future.

17 THE COURT: Don't you -- or maybe in your proposed
18 order you have that second provision about retaining
19 jurisdiction? I mean, do we need to have something separate?
20 The Court retains jurisdiction.

21 MR. RUBIN: We don't necessarily, but for clarity
22 and just -- you were suggesting that language. As long as
23 it's understood, Your Honor, that the Court continues to
24 retain jurisdiction and that the defendants may, if GEICO
25 does go beyond what they say, if they try to revert back and

1 bring subrogation claims or assert claims that are really
2 class members, or they argue they are standing in the shoes
3 of the class members that didn't opt out, the proper place
4 procedurally is to come back to the class action because
5 that's where the Court has exclusive jurisdiction. It is not
6 a motion to dismiss in the GEICO case; it is not a summary
7 judgment motion in the GEICO case which have limitations on
8 what the Court can do in terms of resolving facts. It's
9 coming to enforce the Court's injunction in the final
10 judgment and doing that in front of the settlement court.
11 Obviously, Your Honor, you are the same person, but as a
12 procedural matter, it would be brought in the docket for the
13 class actions. So that's why we wanted to clarify that so
14 the parties know, but if that's -- it is not technically
15 required for retaining jurisdiction.

16 THE COURT: I don't mind any clarification if you
17 feel more comfortable with it, but let's see what GEICO has
18 to say about this before we resolve it.

19 MR. RUBIN: Thank you.

20 MR. GOLDFINE: Well, I agree with -- first, may I
21 have leave of the Court to make a special appearance, since
22 we are not parties in this MDL on our case, that was our
23 motion to intervene. Dan Goldfine on behalf of the law firm
24 of Lewis Roca, on behalf of GEICO, except for the Toyo
25 defendants. Ms. Cassell is here on behalf of GEICO as to the

1 Toyo defendants.

2 THE COURT: Are you admitted? Is this --

3 MR. GOLDFINE: I'm admitted in a different case,
4 but this case is not part of the MDL, and that's why we filed
5 a motion to intervene here to appear.

6 THE COURT: Okay. Can I have the spelling of your
7 last name?

8 MR. GOLDFINE: G-O-L-D-F-I-N-E.

9 THE COURT: F-I-N-E. Okay. You may proceed.

10 MR. GOLDFINE: Thank you. I agree with Mr. Rubin
11 that whatever their motion was seeking over and above the
12 technical complaints was material that doesn't belong here
13 and is not ripe. Any conditions in his proposed order which
14 was filed in the reply -- buried in the reply for which we
15 didn't get to respond to are conditions that are wishful
16 thinking on the part of the defendants.

17 Our claims, as we've briefed for you in the first
18 wave of cases, we believe are direct and they belong to GEICO
19 directly. GEICO pays for the parts in the insureds' -- I
20 mean, we went through this presentation, there are four
21 different buckets, but the one he's talking about is we paid
22 for the parts. We don't believe that that is derivative as
23 we have alleged it.

24 However, if the Court concludes, which it didn't in
25 the original motion to dismiss, that they are not direct, we

1 would have subrogation rights per contract and per common law
2 that would allow us to pursue those claims.

3 THE COURT: Did you read the opinion in GEICO?

4 MR. GOLDFINE: I did read the opinion in the GEICO
5 case.

6 THE COURT: It seems like the only thing you have
7 left is your own fleet claims.

8 MR. GOLDFINE: On the antitrust claims, Your Honor,
9 but the unjust enrichment claims and state consumer
10 protection claims remain, and we are going to pursue that.
11 And to be candid, we are going to replead the antitrust
12 claims. We think with all due respect, Your Honor, you are
13 mistaken on the antitrust standing issue, but we are going to
14 replead them according to the structure you asked us to
15 replead them; we are going to do that. You may continue to
16 dismiss them, and we will preserve that for appeal.

17 But the -- you preserved the other buckets of
18 claims, the unjust enrichment and the consumer protection
19 claims, as well as the fleet claims on the antitrust -- all
20 three buckets as to the fleet claims.

21 So I agree with Mr. Rubin that this motion is no
22 longer ripe, it wasn't ripe to begin with. They are really
23 challenging whether we have stated a claim, and that is
24 properly done in the other case on a Rule 12 motion as
25 opposed to this abbreviated proposition as to whether we can

1 state a claim under a direct theory or on a subrogation
2 theory.

3 So, you know, our opt out notice and our 226-page
4 complaint contemporaneously filed gave them sufficient
5 notice, which is what the case law requires, as to what we
6 were claiming. It laid out in detail as to each of the
7 conspiracies -- frankly more detail than the first and second
8 wave of complaints that we had filed in the case because we
9 have learned more as this has gone along, and it lays out
10 exactly what we are claiming which is primarily that we
11 suffer because we had to pay more.

12 I mean, the easy example is when -- for an example,
13 an insured doesn't have to replace the part, a bumper cover,
14 for example. They don't have to replace it; we still have to
15 pay more for that bumper cover, and that claim still exists.
16 It's not derivative of the insured, and is a direct claim as
17 a result of the wrongful conduct that the defendants engaged
18 in.

19 The defendants may be able to prove at trial that
20 their wrongful conduct didn't cause us to pay more or --
21 and/or disprove all our elements, or, as you pointed out in
22 your opinion, they may be able to prove their affirmative
23 defense of release, but that's why we are here. Had they not
24 tried to release our claims in the settlements, we would not
25 be -- you know, I suspect we would have been in the class and

1 trying to recover as part of the class. It was clear that we
2 were end payors for these parts.

3 I'm happy to address any questions, but given the
4 position that the defendants think that their motion is not
5 ripe or is now moot, I don't want to belabor the Court's
6 time.

7 THE COURT: Okay. Thank you. Counsel.

8 MR. RUBIN: Your Honor, the caveat of they may come
9 back with subrogation claims if what they are bringing now
10 doesn't work for them, that's where we would then come back
11 to the Court and raise our argument about those claims and
12 why those are not claims that they can bring. Those are
13 claims of class members that didn't opt out. Again, that's
14 not ripe because they are not asserting that now, but if they
15 do, we will be back.

16 THE COURT: So there is nothing -- we need to enter
17 the order though still --

18 MR. RUBIN: Yes.

19 THE COURT: -- of the Round 3 --

20 MR. RUBIN: Right. I believe, Your Honor, what's
21 pending right now is the proposed final approval order. You
22 orally approved the settlement at the fairness hearing in
23 August, then final judgments for each of the defendants, and
24 then an order reflecting resolution of these issues.

25 THE COURT: Right. Do you have any objections to

1 the order as proposed?

2 MR. GOLDFINE: Okay. Let me just take it
3 separately.

4 THE COURT: Come to the microphone.

5 MR. GOLDFINE: I apologize. As to the order on the
6 opt out issue, we object to the additional language which was
7 meant to prejudge what's going on here. You know, they have
8 admitted it is not ripe or it is moot, that that should be
9 the grounds for the order. We will be happy to do a proposed
10 order. I'm sure we can come to an agreement on just no
11 additional language as it's laid out in the reply brief.
12 They didn't attach a proposed order to their initial brief.

13 As to the other issues, if they -- if we're out of
14 the case, if our opt out is permitted to stand, as you -- as
15 I recall, I'm sure you don't recall, we discussed -- we
16 can't -- at the motion to dismiss, we cannot object and opt
17 out. We are opting out so --

18 THE COURT: And I have no problem with you opting
19 out. I would rather -- really, I read all of your briefs,
20 but I think the fairest thing is to allow you to opt out. I
21 think they had notice of you -- of you opting out, so that's
22 not a problem, and I will allow you to opt out. You filed
23 your complaint.

24 I do have a problem with the 400-some paragraphs.
25 Could you have done it more concise? I couldn't even read

1 it. I mean, once you get to 100, it's pretty boring.

2 MR. GOLDFINE: My kids will get a kick out of that,
3 Your Honor.

4 You've asked us to now split them up. In total
5 there will be a lot more paragraphs, but by part or part
6 group, they will be shorter. You know, we were facing what
7 evidence we had and tried to present it, and there's just a
8 lot of parts, as you know, as we've discussed at length.

9 THE COURT: I know.

10 MR. GOLDFINE: So we are cognizant of your
11 concerns, and we will try to be more cognizant of the notice
12 pleadings. Of course, in our shoes, you know, we've got in
13 this room alone 100 lawyers who are ready to file motions to
14 dismiss challenging the adequacy of our complaint, so we want
15 to make sure we nip that in the bud as well.

16 THE COURT: How long do you think it will take to
17 file your complaints?

18 MR. GOLDFINE: The new complaints?

19 THE COURT: The separate complaints.

20 MR. GOLDFINE: My team, including Ms. Hazel here
21 from our office, would like us to have at least two months,
22 and that's what our plan is. We discussed that with some of
23 the defendants, I didn't get any objections to the two-month
24 period of time. And what we are going to end up doing -- we
25 have some issues because we've got different case numbers and

1 different statute of limitation issues that -- I don't want
2 to create a gap that I have to relitigate when I re-add this,
3 so we are going to try to figure through those issues. I
4 didn't get the sense from the defendants that they were going
5 to fight us tooth and nail in trying to create gaps out
6 there, but hopefully we can work through all of those issues
7 as part of the motion to amend that was previously filed,
8 adding the complaints. I think they were all in that first
9 case including the second wave and third wave.

10 I do want to just come back. The proposed order
11 that's in the body of their reply, we don't agree with. We
12 think it should just be -- the motion -- the motion on the
13 opt-outs should be denied.

14 THE COURT REPORTER: I'm sorry.

15 MR. GOLDFINE: It should be denied, which is fine.
16 It doesn't have to have an explanation.

17 THE COURT: Okay.

18 MR. GOLDFINE: Thank you, Your Honor.

19 THE COURT: Anything else?

20 MR. RUBIN: I don't think so.

21 THE COURT: Okay. Thank you. Ms. Salzman.

22 MS. SALZMAN: Hollis Salzman.

23 I don't know if we are moving to the next motion
24 here or not, given what was just resolved, but the end payors
25 submitted final judgments to Your Honor that carved out this

1 issue on GEICO, and we're asking the Court to please enter
2 those final judgments so we can get the class settlements
3 finalized. We do not think and I'm not sure that GEICO is
4 even pushing it, that GEICO should be permitted to intervene
5 in our case. At this juncture it's not appropriate and --

6 THE COURT: They are not going to intervene, the
7 Court is allowing them to opt out.

8 MS. SALZMAN: I just wanted to make sure. Thank
9 you.

10 THE COURT: And the Court will enter the final
11 judgment.

12 MR. RUBIN: Thank you, Your Honor.

13 MS. STORK: Thank you, Your Honor.

14 THE COURT: Okay. That takes care of one and two.
15 We have the TED motion.

16 THE LAW CLERK: It's set for 1:00.

17 THE COURT: I wonder if we could move it up. There
18 are no objections. Is anybody here for the TED's motion for
19 final approval?

20 (No response.)

21 THE COURT: No. There were no objectors. Okay.

22 MR. PARKS: Your Honor, Manly Parks for the truck
23 and equipment dealers.

24 We are not aware of any objections or opt outs.

25 THE COURT: Do you want to put your settlement on

1 the record then?

2 MR. PARKS: I would be happy to do that right now,
3 Your Honor.

4 THE COURT: Okay. Let's do that.

5 MR. PARKS: Great.

6 THE COURT: All right.

7 MR. PARKS: Good morning, Your Honor. I'm here
8 with my colleague, Kevin Potere, from our New York office --

9 THE COURT: And Mr. Tallerico is sitting here.

10 MR. PARKS: -- who handled the briefing for this,
11 and I wanted to give him credit for doing a nice job with
12 that. I'm going to handle the argument because he's not
13 admitted to this court, otherwise he would be here for us.

14 The motion for final approval that is before the
15 Court covers four settlements in the radiators, starters and
16 alternators cases. These settlements would yield cash
17 proceeds in excess of \$3.1 million. If approved, these
18 settlements would resolve the last of the truck and equipment
19 dealer cases pending in this action, aside from the Takata
20 claims in the occupant safety systems matter, which are tied
21 up with the bankruptcy proceeding.

22 This particular motion involves settlements with
23 the T.RAD defendants, Hitachi Automotive Systems on behalf of
24 some other Hitachi entities, the MITSUBA defendants and the
25 Bosch defendants.

1 As set forth in our moving papers, we believe that
2 each of the settlements is meaningful, substantial, fair,
3 reasonable and adequate. On that basis we believe that final
4 approval should be granted.

5 The amount of each settlement was a function of
6 several factors including evidence of defendants' misconduct
7 and the volume of commerce potentially affected. The volume
8 of commerce information, because we were in the pre-discovery
9 phase, was obtained through, in many cases, a mediation or
10 settlement master assisted in discussions with the defendant
11 groups and provided for settlement purposes only, and that
12 references back to the process that Mr. Barrett was referring
13 to earlier today, and it is occurring in connection with
14 these mediations and negotiations, the volume of commerce or
15 volume of affected commerce data that is the touchstone
16 ultimately for these settlement conversations in the
17 pre-discovery phase for all of these cases.

18 We did have access to that information as well as
19 other information from cooperators, ACPERA applicants,
20 et cetera, to help us evaluate the conduct evidence in
21 addition to the volume of commerce evidence.

22 We believe that accounting for the prospects of
23 success the defense has asserted, the volume of commerce
24 impacted, and the risks, cost and time associated with
25 proceeding, these settlements represent a great outcome for

1 the class.

2 Now, on the subject of notice, notice was provided
3 to punitive class members in accordance with the notice plan
4 approved by this Court, and that notice plan is detailed in
5 the declaration of Tina Chiango from RG/2, the settlement
6 administrator and notice service provider, that we are using
7 in connection with these proceedings. They are the same
8 vendor we have used with our other settlements.

9 The notice was e-mailed to nearly 125,000 C-level
10 executives at truck and equipment dealerships. It was sent
11 via first-class mail to over 100,000 C-level executives at
12 truck and equipment dealerships. It was posted on the
13 www.truckdealersettlement.com website that we had set up --
14 or that our settlement administrators have set up in
15 connection with this proceeding to post information about our
16 settlements in this case. It was printed in
17 The Wall Street Journal, The Automotive News, Automotive
18 Week, and in the e-newsletters of the American Truck Dealers
19 and The National Trailer Dealers. We are confident that this
20 notice program was thorough and reached a very large
21 percentage of the potential class members.

22 THE COURT: You mentioned you think it reached 80
23 or 90 percent of the class members?

24 MR. PARKS: That is the assessment, I believe, of
25 the settlement administration firm that we are using, and I

1 have no reason to doubt that at all.

2 THE COURT: Okay.

3 MR. PARKS: In terms of reaction of class members,
4 it has been as positive as it could possibly be because we
5 have received no objections and are aware of no opt outs.

6 Now, I would mention that this is, I think,
7 particularly significant in the context of the types of class
8 members we have here. These are large, sophisticated,
9 well-capitalized businesses in some instances with their own
10 in-house legal teams or in-house lawyers, and these are
11 participants who are certainly capable of appreciating the
12 significance of a class action settlement and of making their
13 positions known in the event that they do not agree with the
14 settlements or are not comfortable with the parameters of a
15 settlement. They have not spoken up in not even a single
16 one.

17 Now, with respect to the Rule 23 elements, our
18 moving papers reviewed each of those elements and explained
19 why we believe they are satisfied. Unless Your Honor has any
20 particular question about that aspect of our motion, I would
21 simply rely on our motion papers with respect to those
22 points.

23 THE COURT: No, I've read it.

24 MR. PARKS: Does Your Honor have any further
25 questions for me about the motion for final approval?

1 THE COURT: No. Okay. The Court has reviewed this
2 motion for final approval with the defendants and the truck
3 and equipment dealers, and the Court notes that the -- I want
4 to address the notice first. I'm not going to go through
5 everything you said, where the notice was published and that,
6 I've read it, and it appears to me that's adequate. I had
7 approved the plan before, and I am pleased with the -- what
8 is represented as the percentage of individuals or companies
9 who know that they have this settlement, and so the notice
10 has been proper -- properly executed.

11 There have been no objections, and no opt outs that
12 you know of or the Court is aware of.

13 And in terms of the reasonableness, that is, is the
14 settlement fair, reasonable and adequate. There, of course,
15 is -- are a number of factors the Court must look at. I
16 would like to briefly touch upon those.

17 That's the likelihood of success is number one,
18 and, of course, plaintiffs are always optimistic about their
19 success, but in this case it certainly is not guaranteed, and
20 there are some extremely difficult issues. It's complex. It
21 will go on -- it has gone on for a lengthy period of time,
22 and, of course, it will go -- continue to go on, if not
23 settled, for a significant period of time at great expense.

24 The Court relies tremendously on the judgment of
25 counsel. I've said this before in other settlements, and

1 here I will repeat that the Court is very impressed with the
2 ability of counsel and how they have handled these cases, how
3 you have done in these cases, Counsel, and certainly you know
4 the strengths and weaknesses of the case, and I believe it
5 has been negotiated at arm's length, and that gives the Court
6 great comfort in knowing and believing it's a fair,
7 reasonable settlement.

8 Obviously we've talked about the reaction of class
9 members, and certainly the factor on public interest. The
10 public is always interested for this type of litigation to be
11 taken care of with these complexities as soon as possible.

12 The Court also looks to whether the settlement
13 class should be certified in this case, and I believe that
14 given the numerosity which you have referred to and the
15 common question -- the commonality, that is the question of
16 law or fact that are common to the class, and we know that in
17 antitrust price-fixing conspiracies by its very nature they
18 deal with common legal and factual issues.

19 And the claims of the represented parties appear to
20 be typical of the claims of the class as they all arise from
21 the same event or practice or course of conduct.

22 Adequacy of representation, that relates to the --
23 to both the individually named plaintiffs, and the Court
24 finds that they have adequately, according to the information
25 submitted by counsel, represented the class. And obviously

1 the attorneys who have been appointed -- or who have -- who
2 are taking on this class I believe have adequately protected
3 the interest.

4 Therefore, the Court turns to the final question of
5 whether the class plaintiffs demonstrated that common
6 questions predominate over questions affecting only
7 individual members, and, of course, I find that they do, and
8 they have the same issues here.

9 So therefore the Court finds that the class action
10 is a superior method to adjudicating these -- this matter. I
11 can't imagine it being done in any other way, to be honest.
12 The Court approves the final settlement, and certifies the
13 class for purposes of the settlement.

14 MR. PARKS: Thank you, Your Honor.

15 THE COURT: The next motion we have is the award of
16 attorneys' fees and litigation expenses.

17 MR. PARKS: Correct, Your Honor. Interim class
18 counsel, my firm, Duane Morris, has moved for the award of
19 attorneys' fees in connection with this latest round of
20 settlements and for reimbursement of litigation expenses that
21 we've incurred in connection with prosecuting these claims.

22 We are seeking an award of fees representing
23 30 percent of the settlement proceeds of approximately
24 \$1.1 million after deduction of the cost of class notice and
25 claims administration expenses and escrow agent costs.

1 The claims administration expenses are taken across
2 the four settlements and capped at \$240,000 of expenditures
3 under those agreements, and the escrow agent costs are capped
4 at \$6,000, and those relate to the cost the escrow agents
5 charge to set up the escrow account in the first instance,
6 and then there's an annual fee. We've determined the \$6,000
7 assuming one year of the annual fee because there will be
8 some time between now and the proceeds are fully distributed,
9 and I'm estimating that will be ideally by the end of next
10 year. So we would only ever have one annual fee in the
11 renewal period, so that's where we came up with the numbers
12 there.

13 THE COURT: Do you have any awards for the named
14 plaintiffs?

15 MR. PARKS: We have --

16 THE COURT: Okay.

17 MR. PARKS: We have already sought and obtained one
18 round of awards from the starters and alternators case for
19 the named plaintiffs.

20 THE COURT: Okay.

21 MR. PARKS: We have not sought any awards in
22 connection with the radiators case for the named plaintiffs,
23 but they have received awards in wire harnesses. It's the
24 same group of named plaintiffs in wire harnesses, in
25 bearings, in occupant safety systems, in starters and

1 alternators, and our assessment was that they have been well
2 compensated for their time and efforts. That, in particular,
3 serving as class representatives, is that the Court had been
4 interested in a demonstrated investment of specific hours
5 that relate to a particular award, and because there was an
6 award for the starters and alternators matter already, and
7 the intervening period has really been just since January
8 until now of 2018, it was going to be in our assessment
9 difficult to quantify any meaningful time that was unique to
10 radiators during that period of time, and we thought all
11 other things being equal that it would be the most fair way
12 to proceed, to forego a request for an award with respect to
13 the radiators settlements.

14 THE COURT: All right. So that won't be coming up?

15 MR. PARKS: It will not be coming up, that's
16 correct.

17 THE COURT: And that sounds reasonable.

18 MR. PARKS: That's correct. So the dollar amount
19 just so it is on the record here, it is certainly in our
20 papers, of the fee award that we are requesting is \$857,697.
21 Again, that's 30 percent of the proceeds of the settlement
22 after subtracting the costs I mentioned a moment ago.

23 Counsel is also seeking an award of \$37,297.32 for
24 cost reimbursement. The schedule of costs for which we are
25 seeking reimbursement is set forth in Exhibit 1C to our fee

1 petition motion. The lion's share of the costs relate to
2 payments to cover court-appointed settlement masters for
3 their services related to the facilitation of settlement
4 discussions between the parties.

5 Regarding the requested fee award, that represents
6 a multiple of 1.38 of the lodestar which here is
7 approximately \$620,000. I would note that that runs through
8 August 30th, 2018 only. It would not include the time
9 associated with preparing the motion for final approval, for
10 coming here today, for all of the future settlement
11 administration efforts that we will have to oversee. And so
12 my strong suspicion is that once all of the final accounting
13 is done and following all of those activities, we will have
14 invested significant additional time on these files, and this
15 will be, as I mentioned, our final round of settlements in
16 this proceeding, certainly for radiators, starters and
17 alternators meaning that there aren't further settlements
18 from which we could be compensated for that future time.

19 And while the 1.38 multiple on lodestar is in
20 excess of 1.0, it's, first of all, well within the range that
21 courts in the Sixth Circuit have approved, and, second of
22 all, in the final accounting likely to be much closer to 1.0
23 once all of the time in this proceeding is ultimately wrapped
24 up after the administration of the -- and distribution of the
25 settlement proceeds.

1 During the relevant --

2 THE COURT: As to the costs, before you leave
3 that --

4 MR. PARKS: Yes.

5 THE COURT: For the arbitrators and mediators, are
6 you satisfied that these are the costs that they actually
7 expended and are reasonable?

8 MR. PARKS: Absolutely. I mean, we are talking
9 about some of the best mediators in the United States. I'm
10 sure that's part of why the Court has brought them into this
11 process. They don't come cheap.

12 THE COURT: Well, I guess --

13 MR. PARKS: But they did provide effective service
14 and oversight and help in many cases, not every one of these
15 settlements, but I would say for three of the four helped
16 actively bring the parties together and achieve a resolution.

17 In one of the four I would say that we had
18 extensive involvement of the mediators in trying to
19 facilitate discussions, and frankly most of the time relates
20 to that particular undertaking with this particular defendant
21 group.

22 THE COURT: I question some of these costs. This
23 is somewhat picky, but telephone/fax expenses?

24 MR. PARKS: I believe those are expenses for
25 conference calls for -- you know, we have a firm dial-in

1 number that we can use as a standing -- for long-distance
2 phone calls, and those charges are charged back. That is
3 not, my understanding, a fee for a standard long-distance
4 call, but it's for the conference call services. That's at
5 least my understanding. I would have to talk to our
6 telecommunication folks to confirm that that's what that is,
7 but that's my understanding.

8 THE COURT: What about the \$1.82 for postage?

9 MR. PARKS: That's a good question. I can't tell
10 you about that. My guess is something at some point was sent
11 snail mail or maybe a couple of things were sent via regular
12 mail, although frankly in these --

13 THE COURT: Don't some of these outrageous fees
14 include some overhead that might be telephone and \$1.82? I
15 mean, I'm serious, this really gets me angry -- -

16 MR. PARKS: I do --

17 THE COURT: -- when I see this.

18 MR. PARKS: I do not know frankly how these are
19 calculated. I rely on our accounting department to track
20 these matters. And this is the same exact way that we would
21 track them for any hourly-rate client. And as Your Honor may
22 be aware, my firm is primarily a defense firm and so we are
23 primarily representing clients who pay by the hour, and
24 these -- this would be exactly the costs that they would pay
25 in a standard hourly-rate arrangement where they have agreed

1 to pay litigation costs on an hourly fee.

2 THE COURT: Well, the Court is going to strike
3 photocopying and the postage of \$1.82, and the telephone.
4 You may have the rest.

5 MR. PARKS: Thank you, Your Honor.

6 Now during the relevant period, which was from
7 January 27th, 2018 to August 30th, 2018 for the starters and
8 alternators case, and from inception through August 30th,
9 2018 for the radiators case, Duane Morris attorneys and staff
10 billed approximately 1,250 total hours to these cases as
11 reflected in the billing details attached as Exhibit 1B to
12 the fee petition.

13 You will note that the lion's share of that time is
14 my time, the time of Mr. Shotzbarger and the time of
15 Mr. Potere because we have been the lawyers most active in
16 these matters during that period of time. Mr. Shotzbarger
17 and Mr. Potere are associates with our firm, and I am a
18 partner.

19 So while there are a number of billers listed, many
20 of them have billed a limited amount. For example, Mr. Mack,
21 who is the chairman of our trial department, and to whom I
22 report on this matter internally, has a limited number of
23 hours, but that's -- he's checking with me to make sure
24 things are on track and getting status reports and that sort
25 of thing, but the time is primarily mine, Mr. Shotzbarger's

1 and Mr. Potere's.

2 Now has been the case with virtually all of the
3 actions brought on behalf of the truck and equipment dealers
4 by my firm in this MDL proceeding, I think it's important to
5 consider that in these three cases the enforcement actions
6 were focused entirely on passenger vehicles. As a result, my
7 firm had to develop the claims of the truck and equipment
8 dealers from scratch, and we are very proud to have been able
9 to do so, and in so doing create a meaningful recovery for
10 the class where otherwise there would have been none, and we
11 would submit that that should be considered an important
12 factor in determining what our fee award should be.

13 With that, Your Honor, I'm happy to answer any
14 questions that you have.

15 THE COURT: All right. I have no questions. I
16 think that obviously in these attorneys' fees matters there
17 is a lodestar method and there is a percentage of the fund
18 approach. I prefer the percentage of the fund approach. I
19 think it most accurately sets forth compensation at a rate
20 that everybody understands versus looking at the individual
21 hours. I do the lodestar crosscheck -- you have done that
22 for me actually in this case, and the Court has verified it,
23 and it is certainly within the range acceptable in the
24 Sixth Circuit.

25 And I note there is, as you know in this case -- in

1 these cases, a great variation between like 20 percent and
2 30 percent, I think there was one that was 33.3 percent. In
3 this case, the Court looks at the factors that it has to
4 consider, and the Court finds that the results achieved is
5 very strong in this case, that you -- that you had a great
6 stake, you took it on a contingency fee basis and it was
7 clearly not a clear-cut case for plaintiff, and it was very
8 complex. The Court looked at the hourly rates and also your
9 skill and standing in the community in which you work. And
10 the Court, most importantly in this case, as with much of the
11 directs, looked at the fact, as you indicated, that you have
12 large sophisticated members of your class and that many of
13 them have their own in-house counsel, and to me that means
14 that these individuals understand what it means to have a
15 contingency fee of 30 percent.

16 I feel differently in the end payor class, but I
17 think that there are no objections to this fee. It seems to
18 be fair and reasonable, and the Court will grant the fee of
19 30 percent.

20 MR. PARKS: Thank you very much, Your Honor. We
21 will get an amended order reflecting the modifications the
22 Court has requested to the expenses component to the Court
23 directly.

24 THE COURT: Thank you.

25 MR. PARKS: Thank you, Your Honor.

1 THE COURT: Amongst all of these papers, I lost my
2 agenda.

3 Mr. Tallerico, I didn't call on you, I'm sorry.
4 Who do you represent? You show up here and there.

5 MR. TALLERICO: I represent the T.RAD defendants.
6 I do want to note, these are the fewest words I have ever
7 said in this courtroom.

8 THE COURT: Well said -- well spoken.

9 I want to make clear the attorneys' fees were after
10 the deduction of the expenses. I think you said that
11 in your --

12 MR. PARKS: We will make sure that our order
13 reflects that. Just by point of clarification as we speak,
14 that would be both the expenses identified as well as the
15 expenses that the firm advanced for which we will be
16 reimbursed?

17 THE COURT: Yes.

18 MR. PARKS: Okay. We will make sure that the
19 revised order reflects that.

20 THE COURT: Thank you. Direct purchaser -- auto
21 dealers or direct purchasers, who's ready?

22 MR. KANNER: For the direct purchasers, we are
23 ready.

24 THE COURT: And there are no objections, so you
25 don't expect anybody to come here?

1 MR. KANNER: None that I am aware of.

2 THE COURT: Just one minute while I find my papers.

3 All right. This is the direct purchaser plaintiffs' motion
4 for final approval of settlement with Tokai Rika.

5 MR. KANNER: Tokai Rika and Toyoda Gosei.

6 THE COURT: Okay.

7 MR. KANNER: And there will be three altogether,
8 Your Honor. I'm going to do those two.

9 THE COURT: Okay.

10 MR. KANNER: And Mr. Kohn will be handling the
11 third one on air conditioning systems.

12 THE COURT: All right.

13 MR. KANNER: Your Honor, my name is Steve Kanner,
14 again, for the record, and on behalf of direct purchaser
15 plaintiffs.

16 It's my pleasure to address the Court today with
17 respect to final approval including proposed orders of final
18 judgment releasing the defendants, and an order approving the
19 proposed plan for distribution of settlement funds for
20 Tokai Rika and Toyoda Gosei.

21 If Your Honor deems it appropriate to grant final
22 approval on these settlements, one of the other co-counsel,
23 my colleague, Greg Hansel, seated at the table, will be
24 addressing the Court on the motions for attorneys' fees and
25 litigation costs.

1 With respect to Tokai Rika and Toyoda Gosei, with
2 the Court's permission I would like to proceed with both
3 approval motions together since the facts are similar, and
4 they both are based on the common history of what took place
5 in the OSS or occupant safety systems case, and, of course,
6 the standard required for the Court's approval of those
7 settlements are identical.

8 If I can go into the litigation history for the
9 record. The Court appointed the four co-lead counsel firms
10 here today, and Mr. Fink's firm as liaison counsel back in
11 August of 2012. We've gotten to know each other a little bit
12 since then, Your Honor. You consolidated this matter in
13 January of 2012, and our first consolidated complaint was
14 filed later on that year, which was followed by a
15 second-amended complaint in February of 2014 which had the
16 effect of extending the class period back to 2003.

17 The defendants filed multiple motions to dismiss
18 the direct purchaser plaintiffs' consolidated amended
19 complaint, which included 12(b)(6) motions filed on
20 October 21st, 2013, and after argument the motions were
21 denied in August of 2014.

22 In July of 2015, Your Honor approved the settlement
23 in the amount of \$35.516 million with AutoLiv, which was our
24 icebreaker settlement in that case. And you -- excuse me.
25 Your Honor granted final approval for that in January of

1 2015.

2 Shortly thereafter in February of that year, we
3 announced a settlement with TRW in the amount of
4 \$6.5 million, which was preliminarily approved in April of
5 2015, and final approval was granted in July of 2015 as well.

6 Fast forward to 2017. November 14, 2017 plaintiffs
7 announced proposed settlements with the Toyoda Gosei
8 defendants in the amount of \$34 million, which was
9 preliminarily approved by Your Honor this past April.

10 And finally, we reached a settlement with the
11 Tokai Rika defendants in the amount of \$4 million the end of
12 January of this year, and you also gave preliminary approval
13 of that on April 25th.

14 With those settlements only one other defendant,
15 Takata, currently remains in the case. Of course, as you
16 heard earlier today from one of my colleagues, the Takata
17 bankruptcy continues. Each group has been working with the
18 trustee as has ours, the direct purchaser plaintiffs, and in
19 the last 30 days, we are actually getting down to serious
20 numbers which we believe are doable, and I think the trustee
21 believes they are doable.

22 I hate to be optimistic, it's not my nature as a
23 plaintiff's lawyer, but I think aspirationally we can say
24 that within six months that resolution should be accomplished
25 with Takata, and we'll advise the Court accordingly. We

1 would like to clean this up because that would be the last
2 remaining defendant in this case.

3 THE COURT: Good.

4 MR. KANNER: Let's talk briefly about the terms of
5 the agreement and payments for the class. For Toyoda Gosei,
6 as I mentioned, it is a \$34 million settlement, and that's
7 subject to stipulations which I briefly mentioned earlier
8 today, and I've provided that the total value of that given
9 settlement could not be reduced below \$14.25 million
10 depending on the opt-outs. The information, of course, is
11 disclosed in the notice with the range of the settlements.

12 With respect to Tokai Rika, I also mentioned that
13 is a \$4 million settlement, and that settlement is not
14 subject to a reduction clause, but it is, as is often the
15 case, subject to what is referred to as a blow provision; in
16 case 10 percent or more of the class opts out, the defendant
17 has the option to scotch the agreement. We don't believe
18 that is going to take place based on the responses thus far.

19 Another element of the settlement as is typically
20 the case is cooperation. Each of the settlement agreements
21 list the nature of the cooperation. I'm not going to go
22 through each element individually, but I can tell the Court
23 that they generally include production of documents and data
24 not previously produced, assistance and understanding the
25 data in particular, declarations and affidavits of the

1 relevant witnesses, and proffers by defense counsel, all of
2 which will go to further inculcate Takata, but, of course,
3 Takata is in a unique position of being in bankruptcy.

4 With respect to the settlement status as being
5 fair, adequate and reasonable. The settlements before you
6 today were obtained, as we set forth in the brief, through
7 diligent hard work of counsel on both sides of the V. In
8 each case the negotiations were, indeed, arm's length by
9 experienced counsel who made decisions recognizing the
10 inherent uncertainties of law and, in fact, along with the
11 related risks of -- and costs of highly complex litigation.

12 Plaintiffs' counsel determined that the dollar
13 value, coupled with the cooperation elements, provided ample
14 justification to enter into these settlements.

15 In the course of the litigation, plaintiffs'
16 counsel reviewed millions of documents, I think it's about
17 3.5 million. I did the analysis last night.

18 THE COURT: Could you speak a little more into the
19 microphone.

20 MR. KANNER: I'm sorry. Bad habit. I was just
21 saying that about 3.5 million documents were produced and
22 reviewed by plaintiffs' counsel in connection with this
23 litigation, in addition to those documents produced by class
24 representatives and working with them on their materials.

25 Additionally, plaintiffs conducted interviews of

1 potential witnesses provided by defendants as part of the
2 cooperation agreement as well as detailed proffers by the
3 earlier settling defendants.

4 Accordingly, Your Honor, we believe it is
5 appropriate to conclude that the settlement and our decision
6 to reach these settlements was well founded and falls within
7 the range of reasonableness.

8 With respect to the notice settlement. Following
9 preliminary approval by Your Honor, there was 1,342
10 individual copies of the notice of proposed settlement that
11 were mailed to all potential class members identified by the
12 defendants. On May 16th of this year, pursuant to the
13 Court's direction, a summary notice of proposed settlement
14 with today's hearing date was published in one edition of
15 the Automotive News and in the national edition of
16 The Wall Street Journal. Both of those notices took place on
17 May 21st of this year.

18 Additionally, copies of the notice are posted
19 online at [autopartslitigation](http://autopartslitigation.com) -- I'm sorry,
20 autopartslitigation.com, which has been the direct
21 purchaser plaintiffs' website.

22 The declaration of Mr. Ryan Kao, who is a senior
23 project manager with Epiq Class Action & Claims Solutions,
24 reflects that as of September 6th of this year there were 692
25 page views of the settlement website, and 508 unique visits

1 to the settlement website, per se. And Mr. Kao's report is
2 attached as Exhibit 1 to the settlement counsel's report on
3 dissemination of notice and proposed settlements.

4 Finally, counsel for both of the settling
5 defendants today have advised us that they have, indeed,
6 fulfilled their respective obligations under the Class Action
7 Fairness Act by disseminating requisite notices to the
8 appropriate federal and state officials on April 11th, 2018
9 for Tokai Rika, and January 19th, 2018 for Toyoda Gosei.

10 With respect to any requests for exclusion, as the
11 Court knows, the class members here are some of the largest,
12 extraordinarily sophisticated OEMs in the world represented
13 by highly competent in-house and outside counsel.

14 As of September 6th, Epiq has received -- Epiq, of
15 course, is the settlement administrator -- has received three
16 requests for exclusion from the Tokai Rika settlement, those
17 being Ford, Nissan and Toyota, and remember each of those
18 entities have various subentities, and only one request in
19 the Toyoda Gosei defendant settlement class, and that would
20 be Toyota.

21 Finally, Your Honor, you asked earlier if there
22 were any objections, and for the record I want to clarify
23 that we have received no objections to any of the settlements
24 that we are discussing today.

25 In short, Your Honor, the direct purchaser

1 plaintiffs' counsel believe that the request for final
2 approval of these two settlements, which I am describing for
3 the Court now, have met the requirements of Rule 23 in terms
4 of commonality, numerosity, typicality and adequacy. We
5 firmly believe that the settlements are fair, reasonable and
6 adequate, and submit that the class' interest in this case
7 are best served by the orders of final approval for the
8 settlements. Of course, Your Honor, this is the point where
9 I will ask or answer any questions the Court might have.

10 THE COURT: Okay. No questions. The Court has
11 reviewed the settlement in this matter, and I'm not going to
12 repeat everything that you said, I don't think I need to do
13 that. I do find that the settlement is fair, reasonable and
14 adequate, and the Court judged it under the numerous factors
15 set forth, and that is the likelihood of success on the
16 merits, and, again, you're optimistic, but success is not
17 guaranteed, and these issues create great risk in this case.

18 Certainly, the case is complex, expensive, and we
19 know the duration, and that if it was not settled as such, it
20 would go on for a considerable period of time.

21 The Court relies heavily, as it has said numerous
22 times before, on the experience and judgment of counsel, and
23 I find that counsel has made an informed decision in this
24 case as to how it should be resolved and how it is resolved,
25 and that they did so at arm's length after much discovery,

1 and it's shown in the reaction of class members where we know
2 that there are no opt outs -- at least none received by the
3 Court or counsel.

4 MR. KANNER: No objections, Your Honor. The
5 opt-outs --

6 THE COURT: No objections. I'm sorry. There are
7 the few opt outs that you had mentioned, which the Court is
8 aware of. And the Court finds it is in the public interest
9 to settle this complex antitrust litigation.

10 The Court looks at whether the notice was proper,
11 and as you stated in this case, Mr. Kanner, about the notice
12 and who received it and how it was done, the Court finds that
13 that was reasonable -- it was a reasonable plan and
14 reasonably executed.

15 The class should be certified the Court finds in
16 this matter to effectuate the settlement. There certainly is
17 numerosity. We know there are over a thousand -- you
18 said 1,300-something of number of direct purchaser entities.
19 There's commonality in this antitrust action. There is also
20 typicality, and the representatives are typical of the issues
21 raised in this case; they arise from the same practice.
22 There is the adequacy of representation in that the attorneys
23 are also adequately representing the parties, as I've
24 referenced before. And the common question predominates, I
25 don't think there is any question about that here, it has

1 never been raised, so the Court approves that.

2 The next issue is the distribution of this matter.
3 The Court looks at it, and it must be fair, reasonable and
4 adequate. There is a plan of allocation based on the type
5 and extent of the damages or the injuries on this -- in this
6 case, and an allocation formula is developed. I can't say I
7 know that formula, but I rely on counsel and on the firm
8 executing it, that it has a reasonable and rational basis,
9 and that the opinion of counsel is entitled to considerable
10 weight.

11 The notice sent out describes the plan of
12 allocation here, and I want to say the same thing that I said
13 in the last case. Here with the direct purchasers, you have
14 a more sophisticated group, and that they are well able to
15 understand what this is, and I'm sure looked at that plan of
16 allocation, and the Court has certainly approved similar
17 pro rata distributions in the past, and I will approve this
18 plan also. Okay.

19 MR. KANNER: Thank you very much, Your Honor. I
20 believe drafts of each of those orders has already been
21 presented to the Court, but if not, we will certainly make
22 sure that if they can't be located we will provide them
23 again.

24 THE COURT: Okay. Molly will let you know if they
25 can't be located.

1 MR. KANNER: Thank you very much, Your Honor.

2 THE COURT: Thank you. All right.

3 MR. KOHN: I can still say good morning, Your
4 Honor.

5 THE COURT: Good morning.

6 MR. KOHN: Joseph Kohn, Kohn, Swift & Graf, in the
7 air conditioning systems case.

8 I am pleased to be here to present as briefly as
9 the Court will allow, the motion for final approval of the
10 initial settlement, and that action is between direct
11 purchaser plaintiffs and a defendant, and this is the Valeo
12 defendant.

13 I will do my best not to repeat the law and the
14 presentations that Your Honor's very familiar with and not to
15 repeat what the Court has just heard from my colleague,
16 Mr. Kanner.

17 With respect to the Valeo settlement, our
18 colleague, Mr. Hansel, will also be addressing the issue with
19 respect to our request for fees and costs in the event that
20 Your Honor were to approve the settlement.

21 Your Honor, plaintiffs in this action -- the direct
22 purchaser plaintiffs are Tiffin Motor Homes and the trustee
23 for Fleetwood Entities.

24 The settlement agreement was entered into
25 significantly on February 14th of 2017 of last year,

1 Valentine's Day, so we do have affection for defense counsel
2 nonetheless. We did deal at arm's length throughout the
3 process. And maybe a moment in this case in the history of
4 this, Your Honor, we in the antitrust bar, I think on both
5 sides of the V, are really lucky to be in this bar, and the
6 cordiality and professionalism that we deal with, and I think
7 the stewardship and direction of this Court and Mr. Esshaki
8 has underlined that throughout these proceedings, and really
9 as has the mediators to be able to facilitate these
10 settlements.

11 A second amended consolidated complaint was filed
12 as recently as May 28th, 2018, so we have been continuing our
13 investigation, proving this case as this settlement has been
14 pending. Your Honor entered the notice order on June 14th,
15 2018, and the notice was provided by first-class mail
16 June 28th, 2018, and I have a similar affidavit from the
17 gentleman from Epiq.

18 There were 1,732 notices mailed directly to class
19 members. We also have the publication programs through
20 Automotive News and press releases which to the extent in the
21 direct purchaser cases, unlike some of the other classes
22 where we have a direct mailing list of the purchasers from
23 the records of the defendant, the publication is really a
24 belt and suspenders or a cherry on top. The best notice is
25 the mailed notice, but we also do the publication notice to

1 make sure we are not missing someone. And through the course
2 of the case, we really zeroed in and updated that and focused
3 more on the Automotive News and that particular industry as
4 opposed to the more generic The Wall Street Journal and
5 USA Today notices.

6 With respect to the settlement, we -- as with all
7 of the settlements, the direct purchasers have presented to
8 the Court; there has been no objections from any of the class
9 members. We did receive opt outs from, in this case, six
10 separate groups of purchaser entities. Ford has opted out in
11 every single one of them, Ford plus five, and in this case it
12 was General Motors, Daimler, Mercedes Benz, Nissan and BMW;
13 they are different entities.

14 Again, why they choose one case and not the other?
15 A few moments ago Mr. Kanner mentioned Toyota. Well, Toyota
16 stayed in this case. Honda stayed in this case. Chrysler
17 and Subaru. I thought maybe we had done something to offend
18 the Germans, but Volkswagen stayed in, so it wasn't anything
19 with them, but I think significantly as well, that the
20 hundreds and hundreds of the tier 1 and tier 2, the smaller
21 direct purchasers, have stayed in the class uniformly.

22 Your Honor, the brief we had filed on July 30, 2018
23 we believe goes into detail on the well-established standards
24 for settlement approval, the relevant factors of risk,
25 et cetera. That's pages 7 through 15 of the brief, and we

1 would respectfully rely upon those discussions.

2 The key points are that with respect to this case,
3 air conditioning systems, Valeo is the icebreaker settlement,
4 and we think that that phenomena is proving effective. Once
5 again, I'm not in a position to recite results but hopefully
6 by the next time we are here, I think in November, we have
7 some other settlements, and we can give Your Honor some
8 concrete results with respect to the effect of the icebreaker
9 settlement, but they can say the temperature is getting
10 warmer and the ice is melting in air conditioning.

11 This settlement is in the range of reasonableness.
12 The total amount was \$9.5 million, and that could be reduced
13 based on opt outs to a low of \$8 million as a result of the
14 six entities that I recited earlier. We came out right in
15 the middle of that, so the net final amount of the settlement
16 is \$8.75 million.

17 So that while there was protection for the settling
18 defendants if additional entities opted out, there was a
19 benefit to the class, which they didn't, and we ended up
20 right in the midpoint of that range that the settlement --

21 THE COURT: Well, that is the final amount, the
22 8.75?

23 MR. KOHN: The 8.75 is the final amount which would
24 be available. And this is a case we are not yet proposing
25 the claim form process, unlike in occupant safety systems

1 where there were multiple settlements. Again, that relates
2 to the issue that our colleague, Mr. Parks, talked about
3 earlier that there is some efficiency to try to accumulate
4 several settlements before we go through the distribution
5 process.

6 So, again, the reaction of the class which we had
7 recited in the filing dated September 12th, 2018, that was
8 our report with respect to the notice program which included
9 the declaration from the Epiq people and the list of the
10 opt-outs, so all of that material is on the record.

11 Your Honor, we would respectfully request that
12 Your Honor approve this settlement between our class and
13 Valeo. Actually it is the largest of any single-class
14 settlement with Defendant Valeo, which is a factor in terms
15 of other settlements that the Court has approved.

16 And the order has been submitted. Again, if not,
17 Messrs. Fink will have a copy of the final judgment which was
18 negotiated between the parties.

19 Thank you, Your Honor.

20 THE COURT: All right. The Court approves the
21 settlement of what is now with the opt-outs \$8.75 million.
22 The Court finds it is fair, reasonable and adequate under the
23 standards as set forth in our rules, and we note that there
24 are no objections. There are the opt-outs that have been
25 named, I think Ford, GM, Daimler, AG Daimler Truck, Mercedes,

1 Nissan and BMW, and that's what caused the reduction in the
2 proposed settlement.

3 The Court notes that the settlement certainly is
4 one that -- excuse me while I find it -- that meets the
5 standards. The likelihood of success is, as we have talked
6 about before, is hopeful but very technical and certainly not
7 guaranteed in this case.

8 The case is complex. It costs a lot of money and
9 could go on for a lot longer if not resolved. And the amount
10 of the discovery in this case has been extensive, and we know
11 that -- what the reaction of the class is as the Court
12 referred to it.

13 The judgment of experienced counsel. Again, I
14 stated this is one the Court relies on, and finds that
15 counsel has the experience to evaluate the massive discovery
16 that was done in here in this class and negotiated this
17 settlement at arm's length.

18 It is certainly in the public's interest to resolve
19 these antitrust actions which are notoriously difficult and
20 unpredictable.

21 So the next issue is the notice, and the Court is
22 satisfied with the notice. As Mr. Kanner indicated, there
23 were direct mailings so you know who your plaintiff class is,
24 you know the individual members, and there were direct
25 mailings, plus additional notices that have been referenced

1 with the publication and the online site.

2 The settlement class the Court finds should be
3 certified here because of the numerosity. We know that there
4 are at least 1,700 members, the questions of law or fact are
5 common in antitrust cases, and the -- certainly the claims
6 are typical of the parties here; there's adequacy of
7 representation by both the named plaintiffs and the
8 attorneys. There's a common question that predominates over
9 any individual action. And the Court finds, considering all
10 of these factors, and the notice, which was submitted and
11 effectuated in this case, is fair, reasonable and adequate,
12 and the Court does approve the settlement and certifies the
13 class.

14 MR. KOHN: Thank you, Your Honor.

15 THE COURT: Thank you. Okay.

16 MR. HANSEL: May it please the Court, good morning,
17 Your Honor. Greg Hansel for the direct purchaser plaintiffs.

18 THE COURT: Good morning, Mr. Hansel.

19 MR. HANSEL: This morning, Your Honor, I will be
20 asking the Court to award attorneys' fees, expenses and
21 incentive awards to direct purchaser counsel and direct
22 purchaser named plaintiffs and proposed class representatives
23 in the three settlements that the Court has just approved;
24 the two settlements in occupant safety systems, Toyoda Gosei
25 and Tokai Rika, and the one settlement in air conditioning

1 systems with Valeo.

2 With the Court's permission, in the spirit of
3 efficiency, there are many common points, and I would just
4 ask if I may argue them together?

5 THE COURT: You may.

6 MR. HANSEL: Thank you. Starting with OSS, some of
7 this the Court has already heard, so I'll try to be brief.
8 The total settlement with Toyoda Gosei was \$34 million.
9 Their largest customer, Toyota, opted out, and that reduces
10 the settlement to \$14.25 million. The Tokai Rika settlement
11 in OSS is for the fixed amount of \$4 million, so that was not
12 reduced. So the two OSS settlements total \$18.25 million.

13 Notice was mailed to the 1,342 class members --
14 potential class members. Also, as the Court noted, notice
15 was provided by publication and online. And there were -- in
16 addition to there being no objections to the settlements
17 themselves, there were also no objections to this motion for
18 fee expenses, expenses and incentive awards.

19 Turning to air conditioning systems in the Valeo
20 settlement, the original total amount of the settlement was
21 \$9.5 million, and after the opt-outs that Mr. Kohn recited,
22 the final settlement amount is \$8.75 million. Notice was
23 published, was distributed by mail to 1,732 class members,
24 and online. And, again, there were no objections to either
25 the settlements or for purposes of this motion, the

1 attorneys' fees, expenses and incentive awards requested.

2 Direct purchaser plaintiffs' counsel respectfully
3 requests an attorney fee of 30 percent in connection with
4 both the OSS and the air conditioning systems settlements.
5 And we request that as the Court ordered in the last ruling
6 you made on an attorney-fee motion that we made, that the
7 30 percent be applied to the settlement after deducting
8 litigation expenses.

9 Here are some of the key points as noted in our
10 briefs in favor of this request. The settlements themselves
11 are fair, reasonable and adequate, and the Court has so
12 found. The reaction of the class members has been excellent
13 with very few opt outs and no objections, so there's an
14 indication of broad support.

15 We ask the Court to apply, as the Court discussed
16 earlier in the case of the truck and equipment dealers, the
17 percentage of the fund approach. This approach conserves
18 judicial resources, eliminates disputes about the
19 reasonableness of rates and hours, aligns the interest of
20 counsel with that of the class -- with those of the class,
21 and is typical in this type of litigation. The 30 percent we
22 request is consistent with the other fee awards in this
23 Circuit, as noted in our brief, and in this very MDL case
24 that the Court has awarded in the past.

25 In both cases direct purchaser plaintiffs' counsel

1 vigorously prosecuted and effectively pursued the DPP actions
2 in OSS and air conditioning through our factual
3 investigation, drafting of pleadings, reviewing and analyzing
4 a vast number of documents in the millions of pages. And I
5 would just note that many of these documents were produced
6 under the Court's order, which was a subject of discussion
7 earlier today, that all guilty plea defendants must produce
8 the documents they produced to the Department of Justice.
9 That order, which the Court entered a long time ago, and has
10 updated from time to time in the MDL, resulted in a vast
11 trove of evidence which direct purchaser counsel have been
12 able to analyze.

13 We analyzed this using -- it sounds strange to say
14 it, but human review as well as sophisticated analytics. We
15 have used Japanese language reviewers as well as English
16 language reviewers, who are also attorneys. We have found
17 these people, and they have assisted in the review.

18 In addition, we have received productions of
19 documents from ACPERA applicants -- from the amnesty
20 applicants which have been very helpful.

21 And the Valeo settlement is the first settlement in
22 the air conditioning case, but the Toyoda Gosei and
23 Tokai Rika settlements are not the first settlements in the
24 OSS case. In that case we had previous settlements with
25 AutoLiv and TRW, and as a result of the cooperation of those

1 settlements, we received substantial cooperation of those
2 settling -- those early settling defendants against the
3 remaining defendants at the time, and that took the form of
4 witness interviews, productions of documents, and attorney
5 proffers which are very helpful in giving us a roadmap to the
6 conduct.

7 As an example of a witness interview, I can attest
8 personally, I spent three days interviewing a senior Japanese
9 executive in the seatbelt industry, who was employed by one
10 of the settling defendants in OSS, in the Lompoc Federal
11 Prison in California along with attorneys representing the
12 end payors and the auto dealers. We interviewed this
13 gentleman for three days in the prison with the cooperation
14 of the federal prison authorities, and it gave us a great
15 deal of insight into the conduct and the nature of the
16 industry and the culture that gave rise to the conduct in the
17 MDL as a whole, frankly but certainly in the OSS case.
18 That's just one example of the type of work that counsel have
19 done in the case.

20 In addition, we took a great deal of time
21 negotiating settlements. The mediators have been very
22 effective and continue to be. It happens that in the case of
23 all three of these settlements, there has been what's
24 referred to as bilateral, which means we didn't use the
25 mediators. The attorneys talked directly with each other,

1 and the parties participated in direct negotiations.

2 THE COURT: Imagine that.

3 MR. HANSEL: And it goes back to the
4 professionalism that Mr. Kohn mentioned, so you can still do
5 it, and it happens especially in the antitrust bar, and it
6 certainly happened in these settlements, and it saves some of
7 the expense that the Court noted that mediators can cost, but
8 I think that expense is usually well worth it, having said
9 that. We also prepared the settlement documents and motion
10 papers that are before the Court today.

11 The Court, in addition to applying the usual
12 percentage of fund standard, the Court has employed the
13 lodestar crosscheck in the past.

14 In the OSS case, as of July 31, 2018, direct
15 purchaser counsels' lodestar was \$8,697,966.49. If the Court
16 were to award the 30 percent requested, and taking into
17 consideration the fees that the Court awarded in the earlier
18 OSS settlements in AutoLiv and TRW, the overall lodestar
19 multiplier would be 1.84, which is below 2 obviously and well
20 within the range that courts have approved for the
21 crosscheck.

22 And the actual fee that we are requesting in
23 dollars, 30 percent of \$18,250,000, minus costs and expenses
24 of \$32,847.34, would result in a fee of \$5,465,145.80.
25 That's in OSS.

1 Turning to air conditioning systems, as of
2 June 30th, 2018, the lodestar of DPP counsel was
3 \$1,810,061.25, and the fee requested represents a multiplier
4 of 1.44 times lodestar. By the way, there is an error in the
5 notice report which said it was 1.38, it's actually 1.44.

6 So if the Court granted a 30-percent fee in the
7 Valeo air conditioning settlement, out of the settlement fund
8 of \$8.75 million, after deducting costs and expenses of
9 \$46,704.52, the fee in dollars would be \$2,610,988.64.

10 The Sixth Circuit factors in evaluating a fee
11 include the value of the benefit rendered to the class, the
12 value of the services on an hourly basis, that's the lodestar
13 crosscheck we've just discussed, whether the services were
14 undertaken on a contingency fee basis meaning that there was
15 a risk that plaintiffs' counsel would recover nothing or an
16 insufficient amount to cover their lodestar. This did happen
17 in the wire harness case where the fee awarded was less than
18 half of the lodestar, so it varies from part to part even
19 within this MDL.

20 Another factor is society's stake. The Court
21 mentioned the public interest earlier today, and in rewarding
22 attorneys who produce such benefit in order to maintain an
23 incentive for others, the complexity of the litigation, and
24 professional skill and standing of counsel.

25 With respect to the allocation of fees among lead

1 counsel, liaison counsel and supporting counsel for direct
2 purchasers, we ask the Court to authorize interim lead
3 counsel to allocate the fee among the law firms who have
4 contributed to the result.

5 Finally, I already recited the amounts of
6 litigation costs and expenses, and we respectfully request
7 that the Court approves reimbursement of those amounts.

8 Finally, we request the Court grant incentive
9 awards to the class representatives in both cases, and we
10 request that those be in the amount of \$30,000 each.

11 In the OSS case there are three class
12 representatives, Findlay Industries, Beam's Seatbelts and
13 NM Holdings.

14 In air conditioning there is one -- two class
15 representatives, Tiffin and Fleetwood -- the trustee of
16 Fleetwood, as Mr. Kohn mentioned.

17 None of the class representatives were promised any
18 incentive awards, it is within the Court's discretion. We
19 note that we are requesting lower incentive awards in this
20 case than we did in the wire harness case in which the Court
21 awarded seven class representatives \$50,000 each because this
22 case settled at an earlier stage than the wire harness case.

23 Having said that, the class representatives did
24 substantial work on behalf of the class, and I would like to
25 briefly highlight a few of the types of work that they have

1 done.

2 Probably the most -- of most immediate importance
3 to counsel and the claim was that they educate us on occupant
4 safety systems. As the Court knows, those are made up of
5 seatbelts, steering wheels and air bags; not something we
6 knew a lot about before investigating this case, and the
7 class representatives were right in that industry, and they
8 knew a lot about those products and how they are procured
9 from the defendants and how they become part of systems that
10 are then sold to OEMs.

11 So our three class members were all tier 1
12 suppliers to OEMs who bought directly from defendants. They
13 taught us about the technology, purchasing, and how it fits
14 into a system in the car.

15 The class representatives have devoted significant
16 time and effort. There have been numerous meetings with
17 counsel, they have communicated with counsel extensively,
18 they've preserved electronic and hard copy documents, and
19 took steps to implement their preservation plans. They've
20 communicated with us to discuss collecting documents for
21 review and production to the defendants. They've worked on
22 questionnaires that we've given them. They've reviewed
23 pleadings such as the complaints, and they have kept abreast
24 with interest on the status of the litigation for many years.
25 Finally, they've reviewed the details of and conferred with

1 counsel regarding proposed -- well now approved settlements.

2 In conclusion, Your Honor, direct purchaser
3 plaintiff counsel respectfully ask the Court for the
4 30-percent award after deducting expenses, also for
5 reimbursement of the expenses, and for the incentive award of
6 \$30,000 per class representative.

7 Thank you, Your Honor.

8 THE COURT: All right. Let me ask you this
9 question, in terms of the costs, where are those costs? I've
10 got any number of pages with very minor costs, so where's the
11 explanation, is it in another book?

12 MR. HANSEL: The costs are -- in the case of OSS,
13 they are in Exhibit A. It's actually ECF Document Number
14 164-1, there's an index of declarations from each of the 16
15 law firms who are -- who constitute the plaintiffs' counsel,
16 the DPP counsel in the OSS case, and for each firm there is a
17 list of expenses.

18 And in the air conditioning case --

19 THE COURT: Where is that?

20 MR. HANSEL: It's -- the document is 117-1, it's a
21 similar document with all the different law firms who
22 participated in the work and their respective expenses. The
23 expenses are itemized.

24 THE COURT: So it's the total of all of these
25 individuals?

1 MR. HANSEL: That's correct.

2 THE COURT: Okay. Then I have looked at it.

3 MR. HANSEL: Thank you.

4 THE COURT: Thank you. All right. The Court has
5 reviewed this matter, and I have reviewed the individual
6 expenses, but I hadn't added them all up to that, but I
7 understand what you are saying, and the Court does award the
8 expenses as indicated. There were some phone expenses, I
9 think, on one of those, I'm not quite sure if there are, but
10 I want those deleted.

11 MR. HANSEL: Delete phone expenses?

12 THE COURT: Yes.

13 MR. HANSEL: Yes, Your Honor.

14 THE COURT: Phone, fax, copying, those are the ones
15 I do not allow.

16 MR. HANSEL: Okay.

17 THE COURT: In terms of the awards for the -- the
18 incentive awards for the named plaintiffs, the Court again
19 relies on counsels' representation of what these individuals
20 did, and how much time and effort was put into the named
21 plaintiffs both in terms of educating plaintiffs' counsel, in
22 terms of submitting the discovery, whether it be hard copy or
23 electronic, and in cooperating with counsel in terms of
24 resolving this litigation, and the Court will award the
25 incentive, in this case it was asked for \$30,000 each, and

1 the Court will award that.

2 In terms of the attorneys' fees, I think as you all
3 know, the Court has grappled with attorneys' fees every time
4 this has come up, but I have come to this resolution on these
5 matters here with the direct purchasers. I want to stress
6 the overall thing is that the Court believes the direct
7 purchasers are well-informed, competent companies, and -- I
8 guess they are all companies, there may be some individuals
9 but they know what's going on, and they would understand what
10 is requested here in terms of the attorneys' fees.

11 I understand there was -- the multiplier was wrong
12 in one of the notices by a very small figure.

13 And the Court looks at the fee to see whether it
14 meets the standard as required by our law. The Court notes
15 that, as counsel has said, the percentage of fund approach
16 has been used here regularly, and the Court prefers the
17 percentage of fund method as opposed to the lodestar.

18 The lodestar creates an interesting crosscheck, but
19 the Court also recognizes that that crosscheck is only as
20 accurate as the records are. And the Court notes that in
21 records sometimes hours are expanded, not deliberately, I
22 don't mean in any deceitful way, I just mean like if you get
23 a telephone call or a memo, it is so much percentage, so many
24 minutes allocated to it, and it might not take that time, and
25 every single minute as I understand it is accounted for, but

1 the Court finds that that is just not a very accurate method
2 of measuring what the compensation should be for the
3 attorneys.

4 I think going into it we all know the standard is,
5 as I see it in the Sixth Circuit, is somewhere between 20 and
6 33 percent. I mean, obviously there, both ends have some
7 impressions, but we know here that the Court appointed
8 counsel after looking at their achievements, so to speak, to
9 that -- to the point of the beginning of this case. And the
10 Court is very pleased and impressed with counsel, and I think
11 the complexity of this case shows that it takes competent
12 counsel and it takes a lot of effort to earn this money. And
13 the Court notes that it was taken on a contingency fee basis
14 so that there's an opportunity to put in years of work with
15 no final compensation.

16 Obviously there's complexity in this matter. There
17 is -- it's just a tremendously complex matter involving
18 tremendous organization in order to complete it.

19 I think given all of the factors and given the
20 factors that you have a known set of plaintiffs who are
21 educated, I'm assuming that many of them have their own
22 counsel or hire outside counsel if they don't have inside
23 counsel to review this, and therefore the Court will award
24 the attorney fee of 30 percent after deduction of the
25 expenses, the service cost -- the costs and service awards.

1 Okay.

2 MR. HANSEL: Thank you, Your Honor.

3 THE COURT: There is one other --

4 MR. HANSEL: Your Honor, if it is acceptable, we
5 will submit a revised proposed order that backs out the
6 faxes, copies and telephone calls.

7 THE COURT: Yes, they weren't a lot.

8 MR. HANSEL: We will back that out and get that to
9 chambers as soon as possible.

10 THE COURT: And I would also like --

11 MR. HANSEL: Two orders, one in each case.

12 THE COURT: Yes. I would also like to indicate
13 that you are asking for -- you are asking for you to be able
14 to distribute the attorney fee amongst other attorneys
15 working on this -- to allocate, I should say, the fee. I
16 think I said that in the original order, and I don't think I
17 need to say it again. It says you are appointed to do that
18 in that appointment, it says allocation if I'm not -- I don't
19 have the order here, but I think we said that exactly, so I
20 don't want to do it again to stress it. I don't think we
21 have had much trouble -- we had one instance in the
22 beginning, but that is the order of the Court. Okay.

23 Anything else?

24 (No response.)

25 THE COURT: Do we have anything else on your

1 agenda, which I have also now lost? Now we have the auto
2 dealers' motion, I have three of them.

3 MR. RAITER: You do, Your Honor.

4 THE COURT: Now these were set for later also, but
5 nobody has objected; is that correct?

6 MR. RAITER: No one has objected, no one has
7 indicated that they wish to appear, and no one has indicated
8 that they intend to appear to counsel for the auto dealers.

9 THE COURT: All right.

10 MR. RAITER: Your Honor, I'm Shawn Raiter on behalf
11 of the auto dealers.

12 You are correct, we have three motions before you
13 today. The first is for the final approval of what we have
14 called our Round 3 settlements. The second is for a set
15 aside of potential service awards for our auto dealers. And
16 the third is for attorneys' fees and cost reimbursement, and
17 hopefully an award from the Court for those.

18 So I will start with the final approval motion.
19 You've had two of those today already, you've had a number of
20 them already before. They have been well briefed by all
21 parties. You are completely familiar with the standard and
22 the factors. I will hopefully address the facts that should
23 be important to you rather than the law and the standards.

24 THE COURT: Okay.

25 MR. RAITER: So we have 23 defendant groups in the

1 Round 3 auto dealer settlements. There are 37 separate
2 settlement classes within those settlements. The total
3 amount is approximately \$115 million -- it actually exceeds
4 \$115 million by about \$180,000.

5 As before, Your Honor, the settlements are lump
6 sum, they are cash, there is no reversion. There is
7 substantial cooperation for each defendant. Some of these
8 defendants have agreed to injunctive relief for two years
9 going forward, others have not. Some have agreed to kind of
10 quasi injunctive relief. They don't agree to call it as
11 such, but they agree not to participate in a certain conduct
12 going forward.

13 THE COURT: Okay.

14 MR. RAITER: The total now recovered for auto
15 dealers and presented to the Court for final approval is
16 approximately \$299 million with this 115.

17 We made our Round 1 payments in April 2018 to
18 approximately 3,400 dealerships that filed eligible claims.
19 The only way -- when I say we've made the payments, remember
20 we had these reserves on the allocation plans. So we've not
21 issued the reserves on either Round 1 or Round 2, but we made
22 approximately 85 percent distribution of Round 1 in April of
23 2018.

24 We made the distribution of Round 2 last week, so
25 Round 2 payments have been made; they have either been wired

1 or checks have been sent to approximately 4,700 eligible
2 dealership claims.

3 THE COURT: What was their average -- is there an
4 average?

5 MR. RAITER: Well, yeah, so here's the problem.
6 Some of them file one claim for four dealership locations.
7 Let's say, hypothetically, some of them file one claim for
8 several hundred dealership locations; others may be a
9 dealership group but they file dealer by dealer by dealer by
10 dealer. So the question is a good one, and it is little bit
11 hard to answer directly.

12 As we stated in the papers, some of the dealership
13 groups have already received millions of dollars in payouts.
14 The average, if there is such a thing, is approximately
15 \$30,000 paid right now as of Round 1 and Round 2. This will
16 obviously increase that roughly another 30 percent or so,
17 maybe a little more. So again, it depends on if you are
18 looking at rooftops, roofs, root claims, bundled claims, it
19 is a little bit challenging, but most average-sized dealers
20 are getting tens of thousands of dollars in each settlement
21 round, and has thus far been quite happy.

22 As you can see, we had 3,400 claims filed in
23 Round 2, we had 4,700 -- excuse me. In Round 1 we had 3,400,
24 and 4,700 in Round 2, and there are new dealers filing claims
25 in Round 3 as we speak because they realize, we think, these

1 are good settlements, and it is worth participating.

2 So our claim deadline for Round 3 is January 19th,
3 2019, so we will continue to take in new claims. There are
4 people out there wrestling up more claims. There are these
5 claim filing groups who have an incentive to go find
6 dealerships to file claims on their behalf, which is a good
7 thing; we want people to file claims and participate.

8 The notice plan was carried out as Your Honor had
9 ordered. It was disseminated to approximately 14,000
10 dealership physical addresses, and this is a list that has
11 evolved over time. The claim administrator gathered those
12 from several different places of known new vehicle
13 dealerships in the included states. Some of them might be
14 out of the business; some of them were, in fact, out of
15 business and still filed claims. Some of them have changed
16 names. So you've got a list that's not precise, but it's
17 pretty darn good because it's really known new car
18 dealerships.

19 They then sent e-mails to approximately 44,000
20 e-mail addresses associated with new car dealerships over the
21 same class periods, and then they advertised in all of the
22 normal automobile dealership publications, Automotive News,
23 Auto Dealer Monthly, and then also a very substantial online
24 campaign as well, Twitter, Facebook and some others, along
25 with press releases. We believe that the plan reached 90 to

1 95 percent of potential class members in the indirect
2 purchaser states.

3 We stated in our papers that all of the defendants
4 had sent a timely CAFA notice. I was told today that one
5 maybe did not send it as soon as we had hoped. And if you
6 remember last time for the auto dealer settlements, we had a
7 couple of CAFA notices that were late going out, and because
8 of the CAFA requirement, that the notice did go to the state
9 attorney generals and the district attorney generals,
10 Puerto Rico and the District of Columbia, that you have to
11 give time for them to respond before you can enter judgment.
12 So I believe we are going to have one defendant that we will
13 have to hold off on their final judgment. We did that last
14 time with a handful. So I will have to revise our final
15 approval order to address that just like we did last time,
16 but we will communicate with the Court about the timing of
17 that, and then also remind your chambers when it is time to
18 enter judgment, assuming that you approve the settlement, of
19 course.

20 We submitted these to you like we did last time,
21 which is with an omnibus final approval order, and then
22 individual judgments for each settling defendant. Those
23 judgments have been reviewed and approved by defense counsel.

24 So what I think the process here would be is that
25 if you agree with the settlement, approve the settlements, we

1 would issue the omnibus order and then the individual
2 judgment for each defendant in each of their appropriate
3 cases. Again, we did that in Round 2.

4 The class member reaction was, again, good in our
5 opinion; we had no objections. The opt-outs were essentially
6 the same three dealership groups, as you know, has brought
7 their own actions here or are pursuing their own actions.
8 The out opts, what they have done is they opt out every
9 dealership associated with those groups including many that
10 are not in the included states or the indirect purchaser
11 states.

12 So if you sort the list by the included or indirect
13 purchaser states, there are roughly 290 addresses or
14 dealerships listed. A good number of them say collision
15 centers or hail repair or used cars, which would not be part
16 of our settlement class unless they are a licensed new car
17 dealership as well. They don't appear to be, so that number
18 comes down a bit. Then they also have a lot of dealerships
19 that are listed at the same physical address, so we're not
20 sure if they are, in fact, different rooftops, different
21 dealerships.

22 We think the total numbers of opt outs in Round 3
23 in the included states is approximately 260 dealerships,
24 which, if you crunch the math again using a denominator of
25 potentially eligible dealerships of somewhere north of

1 14,000, we believe it is more like 16,000, your opt-out
2 percentage is between 1 and 2 percent. Again, those are the
3 same dealerships that opted out of Round 2. Many of them
4 filed claims in Round 1 but then elected to participate on
5 their own thereafter.

6 We had a very engaged campaign with them to try to
7 persuade them to stay in the classes because we thought the
8 benefits were good and that they would come out ahead by
9 doing this rather than pursuing claims with their own
10 lawyers. They chose not to.

11 We didn't have any requests to appear. We didn't
12 have any requests for additional information other than claim
13 handling or claim filing information where people asked how
14 do I file a claim or how do I get a claim, how do I do
15 things? We directed those to the claim administrator
16 primarily, but we didn't have anybody saying I don't
17 understand your notice, I don't understand the settlement
18 terms, I don't understand what's being offered, I don't
19 understand anything that I need help with. So we didn't have
20 a lot of reaction.

21 THE COURT: What do you think these opt outs, it's
22 kind interesting for the dealerships, do you think they are
23 going to file their own claims or they didn't want to be
24 bothered or --

25 MR. RAITER: They think they can make more money,

1 and they have been told that by lawyers who are going to work
2 on a contingent basis to try to get them more money. That's
3 the reality. We, having weathered the discovery that we
4 weathered in that case, we don't know how that makes any
5 sense, or how that would work out.

6 When you really look at the settlements here,
7 there's a lot of value to an MDL because the defendants have
8 an incentive kind of to settle in these waves and be done and
9 be over and really have this whole part of this litigation
10 behind them, and we think that that really improves the
11 settlement prospects in the MDL rather than going on your
12 own.

13 But we had discussions with them, with the
14 dealerships. We talked with them about the reality of what
15 they are facing, the reality of what this kind of case would
16 look like if they were to litigate it for -- and I put this
17 in quotes -- only 260 dealerships, and we don't think the
18 economics make sense, but they have been told or persuaded
19 that they do or that they might, so that's what's happening.

20 Sometimes logic is not something you can understand
21 when coming from someone else, so --

22 THE COURT: Do these 260 have the same attorney or
23 are we talking about different --

24 MR. RAITER: Yeah, they do. They have essentially
25 a group of two or three law firms, and they -- it was Group 1

1 Automotive Asbury, and then another dealership group who
2 objected through their own essentially in-house lawyer, and
3 then they are all being represented to our understanding by
4 two or three law firms who believe that they can do better.

5 There is a cottage industry here in antitrust and
6 securities cases in particular of opting out individual
7 plaintiffs hoping to do better, so you have the non-class
8 action lawyers who obviously don't have the opportunity to
9 participate here because you have appointed counsel and
10 therefore they don't have an opportunity to earn a fee here.
11 So they try to opt people out and they litigate elsewhere.
12 And I'm not casting any aspersions on whether that's a good
13 or bad thing, that's just what has happened.

14 So the reaction though if you look at our
15 settlements is quite good. No objections, and this is our
16 third round of no objections. The first round we had no opt
17 outs, and then Round 2 and 3 we have essentially the same
18 groups opting out, and group three they have added some
19 additional dealership locations that may or may not have been
20 part of their Round 2 opt out. Again, our data isn't great
21 because we don't exactly know -- we get a list from them, a
22 letter which has been attached to the notice providers'
23 declaration, telling us here is who is going out. Some of
24 them may have filed a claim in Round 1, some of them may have
25 been bundled in other claims, but what we know is in Round 3

1 they have expressly asked not to participate.

2 THE COURT: Okay.

3 MR RAITER: So as you have noted already about the
4 other plaintiffs' groups here, these dealerships are often
5 represented by their own in-house lawyers. They undoubtedly
6 have outside counsel even if they don't have their own
7 in-house lawyers, and so some of them are publicly traded
8 companies who remain in the litigation. So when we look at
9 the value of the settlement, the benefits, whether they are
10 reasonable, fair and adequate, we think that really speaks
11 loudly to the quality of these settlements; that we don't
12 have sophisticated businesses who are really willing to try
13 to make a dollar with their own in-house lawyers and their
14 own outside lawyers looking at these and not objecting and
15 electing instead to participate, and we think that speaks
16 very loudly about the quality of these settlements.

17 We've went -- we've gone through the factors
18 before; again, cash benefits, lump sums, no reversion,
19 substantial cooperation from each of the settling defendants.
20 Some of these were settlements that were either icebreakers
21 for certain parts or the second or so settling defendants
22 that are still early in some of these parts cases, although
23 we are getting close to being done, which I know Your Honor
24 will be happy about.

25 I have mentioned how the orders are presented. And

1 unless you have questions about the factors or anything else
2 about the facts of the final approval motion, I will allow
3 Your Honor to speak.

4 THE COURT: Okay. Thank you.

5 All right. The Court has reviewed this matter.
6 You certainly have gone over the factual basis for these
7 settlements with these -- what did it involve, 25 component
8 parts, I think, or 24?

9 MR. RAITER: It's 23.

10 THE COURT: 23. And the Court will just very
11 quickly review what I have done today in several other cases
12 with the factors here that need to be looked at to see
13 whether this settlement is also fair, reasonable and
14 adequate.

15 The Court, as you indicated before, notes that the
16 likelihood of success is certainly not guaranteed in these
17 matters, and it could be that these classes would litigate
18 this for a long time and receive no compensation.

19 The litigation is extremely complex, it takes a lot
20 of time, and it is very expensive to deal with. But we do
21 have experienced counsel in this matter that the Court gives
22 great deference to, and the Court finds that counsel has done
23 significant discovery in this case and analysis with the
24 facts, and that it negotiated -- counsel negotiated a
25 settlement at arm's length.

1 We know that none of the class members have
2 objected to the settlement. And the Court does want to -- I
3 note this in the notice, but I want to notice it here, and,
4 Mr. Raiter, you referenced it, that these plaintiffs are
5 sophisticated plaintiffs with counsel -- maybe not themselves
6 but sophisticated enough to have counsel, either in-house or
7 retained, to advise them in these -- in the resolution of
8 this matter. So I would think that they would understand,
9 and with counsels' advice there have still been no
10 objections.

11 There have been opt outs -- there's a group of opt
12 outs, perhaps more than in any of our other settlements, but
13 not necessarily a great percentage. It is not a great
14 percentage; as you indicated, it's 1 to 2 percent of the
15 potential dealerships.

16 So the Court finds that also the public would be
17 interested in settling this complex litigation that the Court
18 finds was fair, reasonable and adequate.

19 The question next is whether the notice was proper,
20 and we know that here the notice was believed to have -- I
21 think you indicated or the papers indicated somewhere about a
22 90 percent reach to the potential claimants, and the Court
23 finds that that is sufficient.

24 The settlement class should be certified because it
25 satisfies all of Rule 23(a)(1) factors; that is there's

1 numerosity in that there is approximately 14,000 or, I
2 believe, 16,000 prospective automotive dealerships, that
3 there is commonality of questions of law or facts common to
4 the class. There is typicality of the represented parties,
5 the claims are typical of the class. There is adequacy of
6 representation, as the Court has already gone into. And
7 there's the common question in these antitrust cases that
8 predominates over any individual question.

9 So the Court does certify the class, and it
10 appoints class counsel, the same class counsel that was
11 appointed sometime ago, that is Cuneo, Gilbert & LaDuca,
12 Barrett Law Group and Larson King, LLP, as the settlement
13 counsel. Okay.

14 MR. RAITER: Thank you, Your Honor.

15 The next motion I think should be quick. We have
16 filed a motion to obtain leave from the Court to set aside
17 1 percent of these settlements that are before the Court for
18 potential future service awards for the dealerships.

19 THE COURT: Okay. I'm not ruling on whether they
20 are entitled to service awards now but simply the set aside,
21 and I think that it is appropriate to do the set aside at
22 this point, and then we will deal with the actual findings
23 later.

24 MR. RAITER: Exactly, Your Honor. The thinking
25 behind this, just so you know, and we did this in Round 2 as

1 well, but the thinking is these dealerships that have served
2 as representatives have done so across all rounds, and we
3 didn't think it would be fair to fund any service awards from
4 only one settlement group or the other. So we thought we
5 need to set that aside, and if we were to come back and ask
6 for additional awards, you could tell us how we would
7 allocate it, or we could make a suggestion about how to
8 allocate across the rounds of settlements.

9 THE COURT: Okay.

10 MR. RAITER: So it is simply a set aside. We
11 noticed it in the notice to the class, and told them we would
12 ask for a 1 percent set aside, and, again, no one commented
13 or objected on that request.

14 THE COURT: Thank you. The 1 percent may be set
15 aside. Then we have a motion for attorneys' fees?

16 MR. RAITER: Yes, Your Honor. So the attorneys'
17 fees, the fun part. We again will not go through the factors
18 other than to note a few that we think are important facts
19 about our circumstances in this litigation and the results
20 that we have obtained.

21 As you know, we have made a request for
22 reimbursement of past expenses for only those cases in
23 Round 3 in which the Court did not already approve a
24 litigation fund. In other words, these would be the new
25 parts for which there was no money set aside and that counsel

1 therefore funded these costs until this time. The request
2 there is for \$358,125.09.

3 We heard Your Honor very clearly today about
4 postage and long distance, and the Exhibit A to Marie Thomas'
5 declaration you will see did not make a request for those
6 things in this round of settlements. We understand you loud
7 and clear going forward, and will be sure we don't do that in
8 the future. So I hope those costs and expenses you will find
9 to be appropriate and reimbursable.

10 Primarily what we have right now in this stage of
11 the litigation, we have document hosting. We continue to
12 have expert costs for potential certification and damage
13 issues with certain of the defendants that have not settled.
14 We have a substantial amount of mediation expense and travel
15 related to mediation and settlement discussions, which
16 obviously have borne some fruit. And so that's really what
17 you are seeing here now is more kind of hosting, potential
18 preparation for certification, and settlement-related
19 matters. So we would request reimbursement of \$358,125.09 as
20 costs that were not reimbursed from a prior settlement fund.

21 THE COURT: I will allow those costs less the ones
22 that I have stricken in the other cases.

23 MR. RAITER: Yes, and that request doesn't include
24 any of those.

25 THE COURT: Okay.

1 MR. RAITER: So I think we are good there.

2 We had again noticed this. We had only asked -- I
3 think in the notice we asked for costs and expenses, and we
4 also then noticed to the class members a request for a
5 set-aside of future litigation expense fund money for, again,
6 these cases involved in Round 3 settlements. We've taken
7 care to establish independent funds, as you have allowed
8 these future litigation expenses to be sure that those
9 expenses are only spent in cases involved in those
10 settlements. Again, it wouldn't be fair in our mind or make
11 sense to have one group of settlements pay for litigation
12 expenses that were not the same parts or not included in
13 there. So we've asked for a set aside here going forward of
14 3 percent of the settlement funds. We again provided notice
15 to the class of that in the notices. There were no
16 objections, no responses to that request.

17 You previously awarded 8 percent in Round 2. Here
18 we are only asking for 3. We see our expenses declining, and
19 we just need to be sure though that if we are going to go to
20 class certification or trial with someone that we have funds
21 set aside to do that from these settlements. Again, it is a
22 fairness issue that these settlements bare their own share of
23 what may be needed to go forward.

24 THE COURT: I will grant that. I have no problem
25 with the set-aside, and we can deal with what they are spent

1 for later.

2 MR. RAITER: And as we have talked about, to the
3 extent those funds are not spent, they will revert back to
4 the settlement class fund.

5 THE COURT: Right.

6 MR. RAITER: So the attorneys' fees. We, again,
7 have asked for 30 percent of the settlement funds after
8 deduction of notice expenses, costs including the future
9 litigation expense that you just mentioned, which is roughly
10 \$3.4 million, so we are asking for 30 percent of the -- it is
11 roughly 112,000 -- excuse me, 112,087,000, 30 percent of
12 that. That translates to 29 percent of the gross settlement
13 funds at issue here roughly, just over 29 percent. We
14 noticed again to the class that we would ask for 30 percent
15 of the settlement funds, so what is actually being asked for
16 is less than the notice said.

17 Your Honor has seen the case law, and there's
18 plenty of case law that allows 33 and half percent or less.

19 I understand -- we have watched the hearing today.
20 I would like to make the point for our 30 percent as well. I
21 understand that you have -- if we look at the orders that you
22 have issued on fees, you ordered more and you have ordered
23 less, and we think 30 percent is appropriate here for these
24 settlements, and here's why.

25 Our goal in this, in our opinion as counsel for the

1 auto dealers, was to get money recovered for THE auto
2 dealerships and to get money in their hands as quickly as
3 possible, and we've done that in Round 1 and Round 2. We
4 expect to do it in Round 3 in pretty short order, and that's
5 a relative term, following the conclusion of the claim
6 process. That, as you know, requires us to go through a
7 deficiency process. Somebody files a claim that is
8 deficient, so the claim administrator says we need more
9 information, they give them warnings, and that takes months.
10 But ultimately what we have now in place is a system that is
11 very, very complicated with a number of defendants and a
12 number of parts, the class periods, the money involved and
13 the number of claimants. It is an incredibly complex claim
14 calculation in order to calculate and tell everybody what
15 they are getting on a parts or vehicle basis, but we have
16 that in place, and we expect for Round 3 that we are going to
17 be able to do that sometime in 2019. Again, the claim
18 process closes end of January.

19 We have been at -- really, you've heard us say
20 this, and you can assess our emotion in doing it or what we
21 were thinking, but we were at ground zero of the discovery
22 process for both the end payors' damages analysis and their
23 class certification analysis and the auto dealers because of
24 where we sit in the distribution chain. The defendants were
25 very focused on us; what are your damages, what are your

1 pass-ons, how can you certify a class? All of what we did
2 there affects the end payors in a case like this. So we were
3 the target of a ton of discovery that others in this
4 litigation didn't face, a ton of stress, a ton of work.

5 And then we also did the same things that the other
6 groups have done as well; reviewed documents, filed motions,
7 opposed motions, appeared, done all of these other things.

8 So if you look at the settlements for the end
9 payors, they are roughly three times larger than ours, and
10 the fee award that you issued recently to the end payors, I
11 believe was around \$108 million 175, and that alone is more
12 than the first two rounds of fees to the auto dealers and
13 what we are requesting here substantially. And the lodestar
14 multiplier for the end payors, for example, after that award
15 was 1.62.

16 If you award 30 percent to the auto dealers today,
17 our multiplier will be 1.09. And I appreciate the Court's
18 decreasing reliance on lodestar and multiplier, but that
19 shows you we did a lot of work to get to where we are at with
20 these settlements. And we think the value of what we
21 provided to us and to the other plaintiff groups in this
22 litigation, the value of what we provided to our class
23 members by getting them the money soon, I'm not sure if
24 anybody else has distributed yet, I believe the directs may
25 have, but our focus has been to get this litigation done, to

1 get it done well for the dealerships.

2 It's a very unique litigation for the dealerships.
3 If you look at indirect purchaser litigations, to find a
4 level of success for intermediate indirect purchasers, like
5 we have had here for the auto dealers, is very difficult to
6 do. I could argue with you that you won't find another case
7 where intermediate level indirect purchasers have done as
8 well as the auto dealers here have.

9 So, Your Honor, I believe that we are well within
10 reason and are certainly within the case law to request
11 30 percent of the settlement funds after the deduction of the
12 future litigation costs, past litigation costs, and the cost
13 of notice and administration of this round of settlement.
14 Thank you.

15 THE COURT: And the --

16 MR. RAITER: I should make one more point.

17 THE COURT: And the setoff for the named plaintiffs
18 here, the incentive awards?

19 MR. RAITER: Correct. I'm sorry. One last point
20 as well. And this isn't lost on you, I know you have talked
21 about the risk, but the firms involved in this litigation,
22 some of them are larger, have more lawyers and more
23 resources; some of them are smaller and by participating in a
24 litigation like this they really take a great risk of the
25 financial well-being of their law firm. Now, you sure hope

1 it pays off and you sure hope you do well, but it is very
2 true that there are certain of the firms in our group who
3 really put the financial well-being of their law firms on the
4 line when they started in this litigation with no guarantee
5 of being paid.

6 Thank you.

7 THE COURT: Thank you. All right. The Court does
8 prefer the percentage of the fund versus the lodestar, and I
9 won't go into why, I have done it several times today, but
10 considering the percentage of the fund, the Court has to
11 review the factors.

12 There are six factors to be considered. There is
13 the value of the benefit rendered, and that is great. There
14 is the -- society is served well by these settlements. And
15 the Court -- excuse me one minute. It is important to reward
16 the attorneys who produce such benefits to maintain -- to
17 award them appropriately and to maintain an incentive to
18 others. The services were undertaken on a contingency fee
19 basis, and as counsel indicates in this case, certainly true
20 as you indicated for some of these attorneys, but I think
21 overall this -- there is always the chance that there is no
22 recovery on a case as major as this. It certainly is complex
23 litigation, and it involves great skill of the attorneys and
24 standing of counsel, really on both sides to litigate.

25 So I affirm everything that you said that you have

1 done in this, Counsel. And when I look at the lodestar,
2 which the Court uses as a crosscheck, of 1.09, it is
3 certainly within the realm of lodestar and lodestars
4 approved in the Sixth Circuit.

5 The Court also notes, as I said before, this is
6 important to me that you are dealing with auto dealers who
7 had notice of exactly what you are seeking for compensation
8 in this matter, and they have access to legal advice, and
9 there has been no objection to the attorney fee as set forth,
10 so the Court does award the 30 percent after the deductions
11 that we have specified here in court. All right. Thank you.

12 MR. RAITER: Thank you, Your Honor.

13 THE COURT: Anything else?

14 (No response.)

15 THE COURT: You have been very quiet, Mr. Cuneo.

16 MR. CUNEO: I'm happy to say hello to Your Honor.

17 THE COURT: Hello.

18 MR. CUNEO: We never argue into a yes answer.

19 THE COURT: Anything else? Any of the defendants?

20 (No response.)

21 THE COURT: Okay. Thank you very much. We will
22 see you next year. Happy holidays.

23 (Proceedings concluded at 12:56 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of In Re: Automotive Parts Antitrust Litigation, Case No. 12-02311, on Wednesday, September 26, 2018.

s/Robert L. Smith

Robert L. Smith, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 10/10/2018

Detroit, Michigan